FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 OCT -4 A 8:24

ROCKNE W. CLARKE
CLERK OF COURTS

COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

STATE OF OHIO

No. 2001 CR 10 0247

v.

PROSECUTING ATTORNEY'S REQUEST FOR ISSUANCE OF WARRANT **UPON INDICTMENT**

DAVID CIMPERMAN
LAST KNOWN ADDRESS: 883 1st St., NE, Apt. 6
MASSILLON, OH 44646

DOB: 06-29-64
SSN: [redacted]1998

(CRIMINAL RULE 9)

TO: THE CLERK OF COURTS

DAVID CIMPERMAN, has been named a defendant in an indictment returned by the Grand Jury.

Issue summons to an appropriate officer and direct him to make personal service upon defendant at the address stated in the caption of this request.

__X__ (A) This Defendant has not made an initial appearance on this matter before any Court.

_____ (B) This Defendant has made an initial appearance before the *** Court, ***, Ohio and that Court's last order concerning bail imposed a *** bond.

_____ (C) The Defendant has failed to appear as required before the _____Court and that the Court has issued an order for the Defendant's arrest.

Special instructions for executing officer:

Notify the defendant to prepare to pay the $41.00 recognizance bond fee at arraignment.

MARTIN FRANTZ
Special Prosecuting Attorney for
Tuscarawas County, Ohio

Capt. Rich Calderon, New Philadelphia Police Department
ONE COUNT UNAUTHORIZED USE OF TELECOMMUNICATION PROPERTY

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 OCT -4 A 8:24

ROCKNE W. CLARKE
CLERK OF COURTS

INDICTMENT

October 2, 2001

CASE NO: 2001 CR 10 0247

NAME: DAVID CIMPERMAN

INDICTMENT FOR: UNAUTHORIZED USE OF TELECOMMUNICATION PROPERTY

THE JURORS OF THE GRAND JURY OF THE STATE OF OHIO AND FOR THE BODY OF TUSCARAWAS COUNTY, ON THEIR OATHS, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO, DO FIND AND PRESENT THAT:

COUNT 1: Between the dates of July 27, 2000 and August 14, 2000, in Tuscarawas County, Ohio. the said DAVID CIMPERMAN, knowingly gained access to, attempted to gain access to, or caused access to be gained to any computer, computer system, computer network, telecommunications device, telecommunications service, or information service, without the consent of, or beyond the express or implied consent of, the owner of the computer, computer system, computer network, telecommunications device, telecommunications service, or information service, or other person authorized to give consent by the owner; said act being UNAUTHORIZED USE OF TELECOMMUNICATION PROPERTY, a Felony of the Fifth Degree, in violation of Revised Code Section 2913.04(B).

CONTRARY TO THE FORM OF THE STATUTE IN SUCH CASE MADE AND PROVIDED, AND AGAINST THE PEACE AND DIGNITY OF THE STATE OF OHIO.

ENDORSED: A TRUE BILL

Deanna Laubenberg
FOREMAN, GRAND JURY

MARTIN FRANTZ
SPECIAL PROSECUTING ATTORNEY
TUSCARAWAS COUNTY

Martin Frantz
By: MARTIN FRANTZ

Jocelyn Stefancin
By: JOCELYN STEFANCIN
Special Assistant Prosecuting Attorney

In the Court of Common Pleas
Tuscarawas County, Ohio

The State of Ohio

vs Case # 2001 CR 10 0247

David Cimperman
LKA: 883 1st St., NE, Apt. 6
Massillon, OH 44646

Warrant On Indictment

To: Tuscarawas County Sheriff:

An Indictment, a copy of which is attached hereto, has been filed in the Tuscarawas County Court of Common Pleas charging the within named defendant, David Cimperman with:

ORC Section	Charge	Counts
2913.04(B)	Unauthorized use of Telecommunications Property	1

You are ordered to arrest David Cimperman and bring David Cimperman to the Tuscarawas County Jail and have David Cimperman before this court for arraignment on Tuesday, October 16, 2001 at 12:30 p. m..

October 4, 2001

Rockne W. Clarke
Clerk of Common Pleas Courts

By Carol A. Draf
Deputy Clerk

Notice to: David Cimperman
This warrant was issued in advance of an initial hearing. Criminal Rule 46 shall apply in setting bond. *Per O.R.C. Sections 2743.70 and 2949.091, a* ***deposit of $41.00*** *plus the amount of bond must be posted in order to be released on bond at arraignment.* ***You must have this with you at arraignment.***

2001 CR 10 0247

Return of Service of Warrant on Indictment
PERSONAL

I received this warrant on this 4th day of October, 2001 at 8:24 o'clock A.m. and made personal service of it on David Cimperman by locating and arresting David Cimperman and tendering a copy of the warrant, a copy of the indictment and all accompanying documents on the 5th day October 2001 and brought David Cimperman to Just served warrant/did not arrest per prosecutor.

(state the place)

Walter R. Wilson
Tuscarawas County Sheriff
By Det Lt. D. L. Cimp #79 Deputy

FAILURE OF SERVICE

I received this warrant on this ____ day of _____, 20___ at _____ o'clock __.m. with instructions to make (person/residence) service upon David Cimperman and I was unable to arrest and serve a copy of the warrant upon David Cimperman for the following reasons

_____
___
_____
_____

_____
_____ County Sheriff
By Deputy Sheriff

FEES	
Service	$5.00
Mileage	_____
Copy	_____
Docket	_____
Postage	_____
_____	_____
Total	5.00

Tracking Number S000012647

ENTERED

RETURN TO CLERK

ROCKNE W. CLARK
CLERK OF COURTS

2001 OCT 10 A 8:34

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

In the Court of Common Pleas
Tuscarawas County, Ohio
General Trial Division

State of Ohio	:	Case No. 2001 CR 10 0247
Plaintiff	:	
vs.	:	
David Cimperman	:	**Bond**
Defendant	:	**Recognizance of Accused**

FILED
Common Pleas Court
Tuscarawas Co., Ohio
Oct. 16, 2001
ROCKNE W. CLARKE
Clerk of Courts

Be it remembered that David Cimperman as principal, personally appeared before the undersigned and jointly and severally acknowledged themselves to be bound to the State of Ohio their upon their ***OWN RECOGNIZANCE.***

The conditions of this recognizance are that the above bound David Cimperman shall personally appear before the Tuscarawas County Court of Common Pleas at the call of the court to answer the charges filed against David Cimperman in case number 2001 CR 10 0247, shall keep David Cimperman's attorney, if any, and the court informed at all times as to David Cimperman's current address and phone number. David Cimperman shall abide by all orders and judgments of the court and not depart without leave. If the conditions of this recognizance are not met or if David Cimperman fails to appear, additional charges may be filed against David Cimperman.

Any refunds will be made after the final order is filed and will be mailed to the depositor by U.S. ordinary mail if the conditions of this recognizance are met.

Agreed to and acknowledged on October 16, 2001.

X _____
Signature of Defendant

SCANNED

Sworn and Acknowledged before me on October 16, 2001.

Rockne W. Clarke, Clerk of Courts
By

Deputy Clerk

Walt Wilson, Sheriff

By

Deputy Sheriff

Addresses and Phone Number of Parties:
1841 Esther Ave, , Akron, OH44312 Phone Number 330-784-4947
Surety: , , Surety Phone #

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2001 OCT 16 A 8:46
ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

STATE OF OHIO
Plaintiff

Case No. 2001 CR 10 0247

VS.

Judge EDWARD E. O'FARRELL

DAVID CIMPERMAN
Defendant

The Times-Reporter hereby respectfully requests permission to photograph Courtroom proceedings in the above-captioned case pursuant to Rule 11 of the Rules of Superintendence for Courts of Common Pleas, State of Ohio, and Canon 3 (A)(7), Code of Judicial Conduct.

The photographer will abide by all rules of the court and will conduct himself or herself in a quiet, unobtrusive and dignified manner.

Signed:

Renee Brown

Renee Brown, Reporter

10-16-01

Date

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 OCT 16 P 1:17

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
vs.	:	JUDGMENT ENTRY-CONDITIONS FOR PHOTOGRAPHING OR VIDEOTAPING COURT PROCEEDINGS-**RULE 12, RULES OF SUPERINTENDENCE FOR COURTS OF COMMON PLEAS-CANON 3(B)(7), CODE OF JUDICIAL ETHICS**
DAVID CIMPERMAN,	:	
DEFENDANT	:	

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 10/16/2001 relative to the request of a media representative for permission to take photographs and/or videotape in Court proceedings open to the public.

The Court

FINDS that the request by a representative of the media for permission to take photographs and/or videotape in the Courtroom was made to the Court in writing as required by **Rule 12, Rules of Superintendence for Courts of Common Pleas, State of Ohio**.

ENTERED

FINDS that photographing and/or videotaping in the Courtroom of the undersigned, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, during the Hearing in the above-referenced case on 10/16/2001 should be allowed and that same will not distract participants or impair the dignity of the proceedings or otherwise materially interfere with the Hearing.

It is therefore

ORDERED, ADJUDGED AND DECREED that permission is granted to **The Times-Reporter, New Philadelphia, Ohio,** during the Hearing on 10/16/2001 in the above-referenced case, to take photographs and/or videotape in the Courtroom of the undersigned as specified by the undersigned prior to commencement of the proceedings.

IT IS SO ORDERED.

Edward O'Farrell

Edward Emmett O'Farrell, Judge

Date: 10/16/2001

cc: The Times-Reporter

EEO'F/pll

In The Court of Common Pleas
Tuscarawas County, Ohio
General Trial Division

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2001 OCT 16 P 1:04
ROCKNE W. CLARKE
CLERK OF COURTS

State of Ohio : Case No. 2001 CR 10 0247

Plaintiff :

vs. :

:

David Cimperman : **Judgment Entry Setting Bond**

Defendant :

This Matter came before the court for consideration of bond. The court being advised by the parties sets the bond in this matter as follows:

_x_ David Cimperman is to be released on a personal recognizance bond pursuant to Criminal Rule 46(A)(1).

_____ David Cimperman is to be released on a Criminal Rule 46(A)(2) bond in the amount of $_____ with 10% feature.

_____ David Cimperman is to be released on a Criminal Rule 46(A)(3) Surety/Cash bond in the amount of $_____. A signature bond pledging real property located in Tuscarawas County at double the full amount may be posted in lieu of the cash by delivering a copy of the property deed and abstract of the title to the clerk of this court. All owners of the real property must personally appear and sign as surety.

Conditions of the bond are that David Cimperman must keep the court and David Cimperman's attorney, informed of David Cimperman's current address and phone number at all times. David Cimperman is not to depart from the jurisdiction of the court without prior court approval. David Cimperman is to immediately report to the office of the clerk of this court to sign and execute this bond and pay the additional state mandated fee of forty one dollars ($41.00) for victims of crime and public defense. David Cimperman shall abide by all orders of this court and appear at the call of the court.

It is so Ordered.

1841 ESTHER AV.
AKRON, OHIO 44312
330 784-4747

Edward O'Farrell
Judge 10/16/2001

cc: ✓David Cimperman
✓Prosecuting Attorney
Atty. ~~Stefanski~~ Hanulak

Assigned to Judge O'Farrell

Fee to be paid by 10/30/2001

Law Offices
Joseph W. Diemert, Jr. & Associates Co., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124-2189
E-Mail: diemertlaw@aol.com

Telephone
(440) 442-6800

Fax
(440) 442-0825

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2001 OCT 19 P 1:21
ROCKNE W. CLARKE
CLERK OF COURTS

Joseph W. Diemert, Jr.
Thomas M. Hanculak
Diane A. Calta
Jeffrey J. Sokolowski

October 18, 2001

ENTERED

Martin Frantz
Special Prosecuting Attorney
115 W. Liberty St.
Wooster OH 44691

RE: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Dear Mr. Frantz:

Please be advised that this office represents David Cimperman in the defense of this matter. Accordingly, and pursuant to Rule 16 of the Ohio Rule of Criminal Procedure, I would ask that you allow me to inspect and copy the following:

1. Any statement of whatever kind or description withing the possession of the State made by the Defendant and/or any co-defendants.

2. Written summaries of any and all oral statements made by Defendant or any co-defendant subsequent to the time of being placed in custody.

3. An recorded testimony made by the Defendant or any co-defendants before the Grand Jury or in any grievance proceeding.

4. A history of all the Defendant's past criminal records.

5. Any books, papers, photographs, recordings, tangible objects, or copies thereof, available to or within the possession, custody or control of the State, and which are material to the preparation of the defense, or are intended for use by the Prosecuting Attorney as evidence at the trial, or were obtained from or belong to the Defendant.

6. Any results or reports of physical or mental examinations; and of scientific tests or experiments made in connection with this case, or copies thereof, available to or within the possession, custody or control of the State; the existence of which is known, or by the exercise of due diligence may become known to the Prosecuting Attorney, including all BCI reports, audits and/or correspondence.

7. A written list of the names and addresses of all witnesses whom the Prosecuting Attorney intends to call at trial, together with any record of prior felony convictions of any witness which record is within the knowledge of the Prosecuting Attorney.

8. All evidence known, or which may become known to the Prosecuting Attorney, favorable to the Defendant, and material either to guilty or punishment.

9. Copies of all statements by any witnesses signed or unsigned, acquired by whatever form and material to or bearing on the merits of this case; including, but not limited to the statements of the investigating officers, and which are in the custody and/or in control of the Prosecuting Attorney or his staff, or subject to and available at his direction or order, or at the direction or order of his staff or agents.

10. The precise nature and conditions of any and all promises, considerations, agreements, and/or inducements or any description; and of any discussions held or made between any State witness and the Prosecuting Attorney, police officials, which might tend to influence that witness' testimony at trial.

Thank you very much for your expected cooperation.

Very truly yours,

Thomas M. Hanculak
Attorney for David Cimperman

TMH/cmg
tmhanculak@aol.com
cc: Jocelyn Stefancin
Rockne W. Clarke
X:\Gen. Clients\F.O.P\Cimperman\Frantz.crim.8.ltr.wpd

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 OCT 19 P 1:22

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIIO

STATE OF OHIO,	)	CASE NO. 2001-CR-10-0247
	)	
Plaintff,	)	JUDGE O'FARRELL
	)	
vs.	)	
	)	**MOTION FOR BILL OF PARTICULARS**
DAVID CIMPERMAN,	)	
	)	
Defendant.	)	

ENTERED

Pursuant to Rule 7(E) of the Ohio Rules of Criminal Procedure, Defendant moves this Court to furnish a Bill of Particulars for the following reasons:

1. The indictment is vague and indefinite;

2. The indictment does not reasonably inform the Defendant of the nature of the charge against him;

3. The Defendant is unable to prepare for a defense to the indictment.

Respectfully submitted,

JOSEPH W. DIEMERT, JR. (0011573)
THOMAS M. HANCULAK (0006985)
JOSEPH W. DIEMERT, JR. &
ASSOCIATES CO., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
440-442-6800
440-442-0825 (fax)
diemertlaw@aol.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing was forwarded to Martin Frantz and Jocelyn Stefancin, 114 W. Liberty Street, Wooster OH 44691, via regular US mail this 18th day of October, 2001.

JOSEPH W. DIEMERT, JR.
THOMAS M. HANCULAK

X:\Gen. Clients\F.O.P\Cimperman\mot.bill.partic.cmg.wpd

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 OCT 23 A 10: 21

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**ARRAIGNMENT JUDGE EDWARD EMMETT O'FARRELL**
	:	JUDGMENT ENTRY-**ARRAIGNMENT**
	:	HEARING CONDUCTED ON 10/16/2001-ENTRY OF **NOT GUILTY** PLEA TO
vs.	:	INDICTMENT-ONE COUNT **UNAUTHORIZED USE OF**
	:	**TELECOMMUNICATIONS PROPERTY (SECTION 2913.04[B], O.R.C.) (F-5)**-PRIVATE LEGAL
	:	COUNSEL RETAINED BY
DAVID CIMPERMAN,	:	DEFENDANT (ATTORNEY
S.S. #[redacted]		THOMAS M. HANCULAK,
D.O.B. 6/29/64	:	CLEVELAND, OHIO-BAIL
HEIGHT-5' 10"		ESTABLISHED (PERSONAL
WEIGHT-170 LBS.	:	RECOGNIZANCE)-ASSIGNED TO
EYE COLOR-BLUE		COURTROOM OF EDWARD
HAIR COLOR-BROWN	:	EMMETT O'FARRELL-**PRE-TRIAL**
SEX-MALE		**CONFERENCE** SCHEDULED ON
RACE-CAUCASIAN	:	**MONDAY, 11/19/2001, AT 12:30**
		P.M. ORDERS ENTERED
DEFENDANT		

ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 10/16/2001, relative to the **Arraignment** of David Cimperman, Social Security No. [redacted], d.o.b. 6/29/64, and pertaining to the felony

criminal charge contained in the Indictment issued in the September 2001 Term of the Grand Jury of Tuscarawas County, Ohio, and filed with the Clerk's Office on 10/4/2001 charging the Defendant with one (1) count **Unauthorized Use of Telecommunication Property** in violation of **Section 2913.04(B), Ohio Revised Code, a felony of the fifth degree.**

The State of Ohio was represented in this case by Special Prosecuting Attorneys Martin Frantz and Jocelyn Stefancin. The Defendant was present in Court pursuant to Summons issued after the Indictment was filed with the Clerk's Office, and was represented by **Thomas M. Hanculak,** Joseph W. Diemert, Jr. & Associates Co., L.P.A., Attorneys at Law, Cleveland, Ohio, privately retained legal counsel.

The Court

FINDS that the Defendant acknowledged that he had received a copy of the Indictment in this case at least twenty-four (24) hours in advance of the commencement of the **Arraignment** Hearing.

FINDS that the Defendant, through legal counsel, waived the reading of the Indictment, waived the reading of the statute under which he is charged, waived the reading of the penalty section of said statute, waived an explanation of his constitutional and statutory rights and privileges, waived an explanation of the pleas available and the meaning of each plea, and entered, in open Court and on the record, a plea of **Not Guilty** to the felony criminal charge contained in the Indictment.

FINDS that the Defendant has retained private legal counsel, **Thomas M. Hanculak**, Attorney at Law, Cleveland, Ohio, to represent him in all matters arising out of the felony criminal charge contained in the Indictment and to which reference has been made above.

FINDS that the matter of **bail** was considered by the Court and that bail should be established in the amount of a **Personal Recognizance,** the issuance of which should be secured by the payment of the Forty-One Dollar ($41.00) nonrefundable statutory fee at the Clerk's Office.

FINDS that by random assignment, the Indictment in this case should be assigned to the Courtroom of Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division.

FINDS that this Indictment should be scheduled for **Pre-Trial Conference** on **Monday, 11/19/2001, at 12:30 P.M.**

FINDS that the Tuscarawas County, Ohio, Sheriff/Agent should fingerprint the Defendant pursuant to **Section 109.60, Ohio Revised Code,** relative to this case.

It is therefore

ORDERED, ADJUDGED AND DECREED that **bail** is established in the amount of a **Personal Recognizance,** the issuance of which shall be secured by the payment of the Forty-One Dollar ($41.00) nonrefundable statutory fee at the Clerk's Office.

ORDERED, ADJUDGED AND DECREED that the Tuscarawas County, Ohio, Sheriff/Agent shall fingerprint the Defendant on 10/16/2001 pursuant to **Section 109.60, Ohio Revised Code.**

ORDERED, ADJUDGED AND DECREED that this Indictment is assigned, by random assignment, to the Courtroom of Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division.

ORDERED, ADJUDGED AND DECREED that this Indictment is scheduled for a **Pre-Trial Conference** on **Monday, 11/19/2001, at 12:30 P.M.** Should this Indictment **not** be resolved by a change of plea or otherwise, the Court shall schedule this Indictment for a Trial by Jury on a **Primary** basis within the time period required by **Section 2945.71(C)(2), Ohio Revised Code**, or

shall enlarge said time period if no Trial dates are available to the Court for assignment between the date of assignment and the **last date for Trial** as calculated by the Prosecuting Attorney.

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

Date: 10/22/2001

cc: ✓ Court Administrator's Office
Special Pros. Attys. Martin Frantz and Jocelyn Stefancin
✓ Atty. Thomas M. Hanculak, Joseph W. Diemert, Jr. & Associates Co., L.P.A., Attorneys at Law, 1360 SPM Center Road, Cleveland, Ohio, 44124
✓ Tusc. County, Ohio, Pros. Office
Attention: Tina Swank
✓ Tusc. County, Ohio, Sheriff/Agent
✓ Courtroom-O'Farrell

ENTERED

EEO'F/pll

COMMON PLEAS
COUNTY OHIO

2001 OCT 29 P 1:57
ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
vs.	:	
DAVID CIMPERMAN, S.S. #[redacted] D.O.B. 6/29/64	:	JUDGMENT ENTRY-**NON-ORAL** CONSIDERATION CONDUCTED ON 10/29/2001-DEFENDANT'S 10/19/2001 **MOTION FOR BILL OF PARTICULARS** CONSIDERED AND **GRANTED**-ORDERS ENTERED
DEFENDANT	:	

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 10/29/2001 on a **Non-Oral** basis relative to the Defendant's 10/19/2001 **Motion for Bill of Particulars**.

The Court

FINDS that the Defendant's 10/19/2001 **Motion for Bill of Particulars** is well taken and should be **Granted**.

ENTERED

It is therefore

ORDERED, ADJUDGED AND DECREED that Defendant's 10/19/2001 **Motion for Bill of Particulars** is **Granted**.

ORDERED, ADJUDGED AND DECREED that the Prosecuting Attorney shall prepare, pursuant to **Rule 7(E), Ohio Rules of Criminal Procedure**, a **Bill of Particulars** and supply it to legal counsel for the Defendant setting up specifically the nature of the offense charged in the Indictment and the conduct of the Defendant alleged to constitute the offense.

ORDERED, ADJUDGED AND DECREED that the Prosecuting Attorney shall supply the **Bill of Particulars** to legal counsel for the Defendant on or before **11/19/2001**.

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

Date: 10/29/2001

cc: Special Pros. Attys. Martin Frantz and Jocelyn Stefancin
Atty. Thomas M. Hanculak,
Tusc. County, Ohio Pros. Office
Attn: Tina Swank

IN THE COURT OF COMMON PLEAS, TUSCARAWAS COUNTY, OHIO

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 NOV 14 P 1: 19

ROCKNE W. CLARKE
CLERK OF COURTS

STATE OF OHIO : **CASE NO. 2001-CR-10-0247**

Plaintiff : **JUDGE: O'FERRELL**

-vs- :

DAVID CIMPERMAN :

REQUEST FOR DISCOVERY

Defendant :

ENTERED

The State of Ohio requests discovery and inspection, with the right to copy or photograph where appropriate, the following material pursuant to Criminal Rule 16(C):

(A) Books, papers, documents and tangible objects, or copies of portions thereof, available to or within the possession, custody or control of the Defendant, and which the Defendant intends to introduce in evidence at trial.

(B) Any results or reports of physical or mental examinations made in connection with the particular case, or copies thereof, available to or within the possession or control of the Defendant, and which the Defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the Defendant intends to call at the trial, when such results or reports relate to his testimony.

(C) A list of the names and addresses of witnesses the Defendant intends to call at trial.

JOCELYN STEFANCIN (#0047140)
Assistant Prosecuting Attorney
115 West Liberty Street
Wooster, Ohio 44691
Phone: (330) 262-3030

CERTIFICATE OF SERVICE

ENTERED

I hereby certify that a copy of the foregoing Request for Discovery was served by regular mail upon Thomas M. Hanculak, Attorney at Law, 1360 S.O.M. Center Rd., Cleveland, OH 44124-2189, this November 9, 2001.

JOCELYN STEFANCIN (#0047140)
Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS, TUSCARAWAS COUNTY, OHIO

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2001 NOV 14 P 1:19
ROCKNE W. CLARKE
CLERK OF COURTS

STATE OF OHIO	:	**CASE NO. 2001-CR-10-0247**
Plaintiff	:	**JUDGE: O'FERRELL**
-vs-	:	
DAVID CIMPERMAN	:	**RESPONSE TO DEMAND FOR DISCOVERY**
Defendant	:	

ENTERED

The State of Ohio, provides the following information pursuant to Defendant's Demand or Motion for Discovery:

1. Statement of Defendant/Co-Defendant, [C.R. 16 (B) (1) (a) (I)]:

   ☐ Attached ☐ Available ☑ None

2. Written summaries of oral statements, [C.R. 16 (B) (1) (a) (ii)]:

   ☐ Attached ☐ Available ☑ None

3. Recorded testimony before Grand Jury, [C.R. 16 (B) (1) (a) (iii)].

   ☐ Attached ☐ Available ☑ None

4. Defendant's prior record, [C.R. 16 (B) (1) (b)]:

   ☑ Attached ☐ Available ☐ None

5. Documents and tangible objects, [C.R. (B) (1) (d)]:

   Police radios; police portable radios; E-mails to Brinkley Electronics

6. Reports of examinations and tests, [C.R. 16 (B) (1) (d)]:

   ☐ Attached

7. Witness names and addresses, [C.R. 16 (B) (1) (e)]:

Capt. Rich Calderon, Officer Rocky Dusenberry, Chief Staggers, Capt. Sheldon DeMattio, Officer Shawn Nelson, New Philadelphia Police Dept., 122 Second St. SE, New Philadelphia, OH 44663

Dennis DiRienzo, BCI, 904 Sahara Trail, Broadman, OH 44514

Tim Staley, Staley Electronics (address to be provided)

Andy Brinkley, Brinkley Electronics, 8411 NC HWY 109, Winston-Salem, NC 27107

8. There is no evidence favorable to Defendant.

9. An in camera inspection of witnesses' statements will be afforded as required by C. R. 16 (B) (1) (g) upon motion made at the proper time and in the proper forum.

JOCELYN STEFANCIN (#0047140)
Assistant Prosecuting Attorney
115 West Liberty Street
Wooster, Ohio 44691
Phone: (330) 262-3030

ENTERED

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Request for Discovery was served by regular mail upon Counsel for the Defendant, Thomas M. Hanculak, Attorney at Law, 1360 S.O.M. Center Rd., Cleveland, OH 44124-2189, this November 9, 2001.

JOCELYN STEFANCIN (#0047140)
Assistant Prosecuting Attorney

COURT OF COMMON PLEAS

GENERAL TRIAL DIVISION

Tuscarawas County, Ohio

EDWARD EMMETT O'FARRELL
JUDGE

101 EAST HIGH AVENUE
SUITE 202
NEW PHILADELPHIA, OHIO 44663-2599
(330) 364-8811
(330) 602-8811 FAX

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2001 NOV 27 A 10: 12
ROCKNE W. CLARKE
CLERK OF COURTS

November 26, 2001

Robert R. Stephenson II
Assistant Prosecuting Attorney
Tuscarawas County, Ohio
125 East High Avenue
New Philadelphia, Ohio 44663

Thomas M. Hanculak
Attorney at Law
1360 S.O.M. Center Road
Cleveland, Ohio 44124-2189

Re: **State v. David Cimperman**
Case No. 2001 CR 10 0247

Gentlemen:

This will confirm the **Pre-Trial Conference** which was scheduled to be conducted on 11/19/2001 at 12:30 P.M. (See Arraignment Judgment Entry of 10/23/2001). The **Pre-Trial Conference** was **not** conducted because Mr. Hanculak failed to appear. I trust this was an oversight on Mr. Hanculak's part.

Please be advised that Mr. Stephenson has communicated to the undersigned that the **Last Date for Trial** of the Indictment is **7/2/2002.** Mr. Stephenson also apprised the Court that Mr. Cimperman has no prior serious misdemeanor or felony record.

Please be advised that should Mr. Cimperman plead **Guilty** or **No Contest** to the felony criminal charge set forth in the Indictment, I would promise the following sentence:

- A six (6) month term of imprisonment in the Department of Rehabilitation and Correction would be selected from the range of six (6) months minimum to twelve (12) months maximum and **reserved** for imposition.

- A two (2) year period of **Supervised Community Control Sanctions** would be imposed. Those **Sanctions** would be as follows:

  - **Residential Sanctions (Section 2929.16, Ohio Revised Code)**

    - None

  - **Non-Residential Sanctions (Section 2929.17, Ohio Revised Code)'**

    - Monitored time - requirement that Defendant lead law-abiding life.

    - Basic Supervision by Adult Parole Authority Office.

    - Investment of one hundred fifty (150) hours of Community Service.

    - Other standard **Non-Residential Sanctions** to be determined individually at sentencing.

- **Financial Sanctions (Section 2929.18, Ohio Revised Code)**
  - Assessment and payment of Court costs.

Lastly, please be advised that a **Primary Jury Trial** has been scheduled in this case on **Thursday, 1/17/2002 at 9:15 A.M.** You will receive no further notice of the Trial Assignment in this case. Should the Defendant decide to plead **Guilty** or **No Contest** to the felony criminal charge contained in the Indictment would Mr. Hanculak please contact the Court Administrator's Office for the purpose of scheduling the Indictment for a **Change of Plea** Hearing? Should the matter not be resolved by a **Change of Plea,** it will be resolved on the **Primary Jury Trial** date scheduled above.

Very truly yours,

Edward O'Farrell

Edward Emmett O'Farrell,
Judge

EEO'F/lrb

cc: Court Administrator's Office
Court

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2001 NOV 27 A 10: 12

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
	:	
	:	JUDGMENT ENTRY-**NON-ORAL** CONSIDERATION CONDUCTED ON 11/19/2001-**SPECIAL PROSECUTING ATTORNEYS MARTIN FRANTZ AND JOCELYN STEFANCIN (WAYNE COUNTY, OHIO PROSECUTING ATTORNEYS OFFICE)** RELIEVED OF ALL FURTHER FIDUCIARY DUTY TO THE STATE OF OHIO IN PROSECUTING THE INDICTMENT IN THIS CASE-TUSCARAWAS COUNTY, OHIO PROSECUTING ATTORNEY'S OFFICE REINSTATED AS LEGAL COUNSEL FOR STATE OF OHIO-ORDERS ENTERED
vs.	:	
	:	
DAVID CIMPERMAN,	:	
S.S. # [redacted]	:	
D.O.B. 6/29/64	:	
DEFENDANT	:	

ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division on 11/19/2001 on a **Non-Oral** basis relative to the continued prosecution of the Indictment in this case by **Special Prosecuting Attorneys Martin Frantz and Jocelyn Stefancin.** Mr. Frantz is the elected Prosecuting Attorney

of Wayne County, Ohio and Ms. Stefancin is an Assistant Prosecuting Attorney in Wayne County, Ohio.

The Court

FINDS that Mr. Frantz and Ms. Stefancin should be allowed to withdraw as legal counsel for the State of Ohio inasmuch as the reason for their involvement in the prosecution of this Indictment, a **conflict of interest** with the Prosecuting Attorney of Tuscarawas County, Ohio, has been removed.

It is therefore

ORDERED, ADJUDGED AND DECREED that **Special Prosecuting Attorneys Martin Frantz and Jocelyn Stefancin** are relieved, effective **11/19/2001,** of all further fiduciary duty to the State of Ohio in prosecuting the Indictment in this case. The Tuscarawas County, Ohio Prosecuting Attorney's Office is reinstated as legal counsel for the State of Ohio in prosecuting the Indictment in this case.

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

11/26/2001
Date

cc: ✓ Court Administrator's Office
✓ Special Prosecuting Attorneys Martin Frantz and Jocelyn Stefancin
✓ Asst. Pros. Atty. Robert R. Stephenson II
✓ Atty. Thomas M. Hanculak

EEO'F/lrb

ENTERED

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

Case No. _____

vs

2002 JAN -3 A 11:53

ROCKNE W. CLARKE
CLERK OF COURTS

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of _____ County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for (~~Defendant~~ Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____ $135.93
TOTAL $_____

WITNESS my hand and Seal of said Court this 3rd day of January, 2002

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

Case No. _____

2002 JAN -3 A 11:51

ROCKNE W. CLARKE
CLERK OF COURTS

vs

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of _____ County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

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You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for ~~(Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____
TOTAL $_____

$125.94

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11: 50

ROCKNE W. CLARKE
CLERK OF COURTS

Case No. _____

vs

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of _____ County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

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You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____ $135.95
TOTAL $_____

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11:48

ROCKNE W. CLARKE
CLERK OF COURTS

Case No. _____

vs

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for ~~(Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____
TOTAL $_____

WITNESS my hand and Seal of said Court this _____ day of _____, 20 _____

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11:49

ROCKNE W. CLARKE
CLERK OF COURTS

Case No. _____

vs

_____

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____
TOTAL $_____

$12.17

WITNESS my hand and Seal of said Court this 3rd day of _____, 20 02

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

Case No. _____

vs

2002 JAN -3 A 11:47

ROCKNE W. CLARKE
CLERK OF COURTS

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of _____ County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $ _____
Mileage _____
Misc. Fee _____ $13598
TOTAL $ _____

WITNESS my hand and Seal of said Court this 3rd day of _____, 20 02

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11:46

ROCKNE W. CLARKE
CLERK OF COURTS

Case No. _____

vs

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of _____ County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

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You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for ~~(Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____
TOTAL $_____

F1685

WITNESS my hand and Seal of said Court this _____ day of _____, 20 _____

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

THE STATE OF OHIO

Case No. 2001 CR 10 0247

2002 JAN -3 A 11:44

vs

ROCKNE W. CLARKE
CLERK OF COURTS

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

~~CIVIL~~ CRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the ~~Sheriff of~~ PROSECUTOR FOR SERVICE BY REGULAR U.S. MAIL County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Andy Brinkley, c/o Brinkley Electronics, 8411 N.C. Hwy. 109, Winston-Salem, NC 27107
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO (Plaintiff/Defendant).

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF TRIAL.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CONTACT THIS OFFICE UPON RECEIPT OF THIS SUBPOENA AT 330-364-8811 EXT. 3275 TO CONFIRM RECEIPT. ADDITIONALLY, PLEASE CALL THIS OFFICE, AFTER 1:00 P.M., THE DAY BEFORE AT THE ABOVE NUMBER TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert K. Stephenson II
Signature

Attorney for ~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the 3RD day of January

20 02, I (served/~~was unable to serve~~) the above named individual by

Regular U.S. Mail

Dated 1-3, 20 02

~~Sheriff of~~ Tusc Co. Proc. Office ~~County~~

By Tina Swank

Service fees:
Service and Return $ _____
Mileage _____
Misc. Fee _____
TOTAL $ _____

A218

CLERK OF COURTS ROCKNE W. CLARKE
2002 JAN -3 P 2:45
FILED COURT OF COMMON PLEAS TUSCARAWAS COUNTY OHIO

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas
Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

ENTERED

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN -4 P 12: 30
ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

STATE OF OHIO,	)	CASE NO. 2001-CR-10-0247
	)	
Plaintff,	)	JUDGE O'FARRELL
	)	
vs.	)	
	)	**MOTION TO DISMISS AND**
DAVID CIMPERMAN,	)	**MEMORANDUM IN SUPPORT**
	)	
Defendant.	)	

ENTERED

Now comes the Defendant, by and through counsel, and respectfully moves the Court for an order dismissing the *unauthorized use of telecommunications equipment* charge against the Defendant in the above-referenced matters pursuant to Crim. R. 12. This basis of the Motion is fully set forth in the Memorandum attached hereto.

Respectfully submitted,

Thomas M. Hanculak (0006985)
Joseph W. Diemert Jr. & Assoc. L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
E-mail: diemertlaw@aol.com
Counsel for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Dismiss and Memorandum in Support has been served via facsimile (330-364-4135) and regular U.S. Mail, postage prepaid to Robert R. Stephenson, II, Assistant Prosecuting Attorney, Tuscarawas County, Ohio, 125 E. High Avenue, New Philadelphia OH 44663, this 4th day of January, 2002.

THOMAS M. HANCULAK

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN -4 P 12: 31
ROCKNE W. CLARKE
CLERK OF COURTS

STATEMENT OF THE CASE

The Defendant, **David Cimperman**, is a six year veteran of the New Philadelphia Police Department, promoted to Captain in June of 2000. The relevant facts of this case are as follows.

The Defendant was notified of a complaint against him regarding the equipment that is the subject of the indictment on May 18, 2000 and that a disciplinary hearing was scheduled for June 12, 2000. After the disciplinary hearing, in August of 2000, the city requested an investigation of the matter by B.C.I. After the investigation, the City repeatedly offered to drop the investigation if the Defendant would resign from the Department. The Defendant refused to resign under this condition and on August 31, 2000, the Defendant was fired. He then requested arbitration.

The arbitration was held May 3, 2001. The arbitration resulted in Defendant's reinstatement, without back pay, to the rank of Captain. In August 2001, the City filed additional charges against the Defendant and once again terminated him. The Defendant was subsequently indicted in the matter herein in October 2001, approximately *one year and two months* following the city's discovery of the evidence allegedly supporting the indictment.

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN -4 P 12: 31
ROCKNE W. CLARKE
CLERK OF COURTS

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN -4 P 12: 31

ROCKNE W. CLARKE
CLERK OF COURTS

LAW AND ARGUMENT

I. The City's Delay of a Year and Two Months from the Date of the Receipt of the Investigation by BCI to the Issuance of the Indictment Resulted in Actual Prejudice to the Defendant.

The Ohio Supreme Court has held that pre-indictment delay which results in actual prejudice to a defendant may give rise to dismissal of criminal charges as a violation of Due Process rights under Section 16, Article I of the Ohio Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. **State v. Luck**, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984).

The actions of both the prosecutor's office and the Police Department of New Philadelphia have resulted in such a violation of Due Process Rights. The City and the Defendant submitted the matter to a mutually agreed upon arbitrator, who saw fit to reinstate the Defendant, in spite of the charges. Dissatisfied with that result, the City continually threatened Defendant with criminal prosecution if he did not voluntarily resign from the Department.

The extended delay between the investigation and the indictment has further resulted in damage to the Defendant's reputation in the Police Department and the community. There has been extensive negative news coverage in this small town, thereby jeopardizing Defendant's chances of obtaining a fair trial.

Courts have also held that a delay in indictment caused by an initial pursuit of civil remedies without relief can be determined to violate Due Process rights. **The City of Bowling Green v. Dickinson**, 19 Ohio Misc.2d 9, 483 N.E.2d 500 (Mun. Crt. 1984). In that case, an umpire was assaulted at a baseball game. He chose to pursue civil remedies first. When those failed to produce the desired result, criminal charges were

filed. The court held that the pre-indictment delay was prejudicial and dismissed the charges. **Id.**

That is the case here. The City chose to go ahead with civil procedures to obtain the result they desired, the termination of the Defendant. When the arbitrator chose to reinstate the Defendant in opposition to the City's desire, they instituted criminal charges against him.

For the foregoing reasons, the indictment of the Defendant results in actual prejudice to his case and the charges should be dismissed.

II. The City and the Prosecutor's Office Had No Justifiable Reason for Delaying the Defendant's Indictment.

In **State v. Luck**, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984), the Supreme Court of Ohio stated that in order to sustain a Motion to Dismiss for a violation of Due Process Rights, the State must have had no justifiable reason for the delay in indictment. When the State has all the information necessary to issue an indictment yet does not there is no justifiable reason for the delay. **State v. Kelly**, 101 Ohio App.3d 700, 656 N.E.2d 419 (Ct. App. Montgomery County 1995). In that case, an undercover police officer obtained evidence against the Defendant sufficient to support an immediate indictment, but the warrant was not issued for another five months.

That is precisely the issue here. The City had the results of the B.C.I. investigation as early as August 2000 (see copy of letter from Prosecuting Attorney to Safety Director). This investigation yielded the basis for the indictment. However, the City did not issue the indictment until October 2001, a year and two months later. There was no justifiable reason for this delay, thus the charges against Defendant should be

JOSEPH W. DIEMERT, JR. & ASSOCIATES CO., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
Fax: (440) 442-0825
e-mail: diemertlaw@aol.com

FAX COVER SHEET

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TUSCARAWAS COUNTY OHIO
2002 JAN -4 P 12: 31
ROCKNE W. CLARKE
CLERK OF COURTS

FAX NUMBER TRANSMITTED TO: 330-343-4682

To: ROCKNE W. CLARK, CLERK
TUSCARAWAS COUNTY COMMON PLEAS COURT

From: THOMAS M. HANCULAK

Client/Matter: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Date: January 4, 2002

DOCUMENTS	NUMBER OF PAGES*
(SEE ATTACHED)	-7-

COMMENTS:

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Law Offices
Joseph W. Diemert, Jr. & Associates Co., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124-2189
E-Mail: diemertlaw@aol.com

Joseph W. Diemert, Jr.
Thomas M. Hanculak
Diane A. Calta
Jeffrey J. Sokolowski

Telephone
(440) 442-6800

Fax
(440) 442-0825

January 4, 2002

COPY VIA FACSIMILE 330-343-4682
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P.O. Box 628
New Philadelphia OH 44663

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TUSCARAWAS COUNTY OHIO
2002 JAN -4 P 12: 31
ROCKNE W. CLARKE
CLERK OF COURTS

RE: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Dear Clerk:

Enclosed please find an original plus one of the Motion to Dismiss and Memorandum in Support in the above captioned matter. Please file the original in your usual manner and return the extra copy in the enclosed self-addressed, stamped envelope. Thank you.

Very truly yours,

Thomas M. Hanculak

TMH/cmg
tmhanculak@aol.com
Enclosure
cc: Robert R. Stephenson, II

X:\Gen. Clients\F.O.P\Cimperman\letters\ct.mot.dismiss.wpd

dismissed as violation of his Due Process rights.

CONCLUSION

Based on the foregoing argument and authorities, the Defendant asserts that the City has violated Defendant's Due Process rights. Accordingly, Defendant respectfully requests the this Honorable Court to dismiss the charge against him.

Respectfully submitted,

THOMAS M. HANCULAK (006985)
Joseph W. Diemert, Jr.
& Associates Co., L.P.A.
1360 SOM Center Road
Cleveland, Ohio 44124
(440) 442-6800
(440) 442-0825 fax
Email diemertlaw@aol.com

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TUSCARAWAS COUNTY OHIO
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COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2002 JAN -7 P 12: 49
ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIIO

STATE OF OHIO,	)	CASE NO. 2001-CR-10-0247
	)	
Plaintff,	)	JUDGE O'FARRELL
	)	
vs.	)	
	)	**MOTION TO DISMISS AND**
DAVID CIMPERMAN,	)	**MEMORANDUM IN SUPPORT**
	)	
Defendant.	)	

ENTERED

Now comes the Defendant, by and through counsel, and respectfully moves the Court for an order dismissing the *unauthorized use of telecommunications equipment* charge against the Defendant in the above-referenced matters pursuant to Crim. R. 12. This basis of the Motion is fully set forth in the Memorandum attached hereto.

Respectfully submitted,

Thomas M. Hanculak (0006985)
Joseph W. Diemert Jr. & Assoc. L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
E-mail: diemertlaw@aol.com
Counsel for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Dismiss and Memorandum in Support has been served via facsimile (330-364-4135) and regular U.S. Mail, postage prepaid to Robert R. Stephenson, II, Assistant Prosecuting Attorney, Tuscarawas County, Ohio, 125 E. High Avenue, New Philadelphia OH 44663, this 4th day of January, 2002.

THOMAS M. HANCULAK

STATEMENT OF THE CASE

The Defendant, **David Cimperman**, is a six year veteran of the New Philadelphia Police Department, promoted to Captain in June of 2000. The relevant facts of this case are as follows.

The Defendant was notified of a complaint against him regarding the equipment that is the subject of the indictment on May 18, 2000 and that a disciplinary hearing was scheduled for June 12, 2000. After the disciplinary hearing, in August of 2000, the city requested an investigation of the matter by B.C.I. After the investigation, the City repeatedly offered to drop the investigation if the Defendant would resign from the Department. The Defendant refused to resign under this condition and on August 31, 2000, the Defendant was fired. He then requested arbitration.

The arbitration was held May 3, 2001. The arbitration resulted in Defendant's reinstatement, without back pay, to the rank of Captain. In August 2001, the City filed additional charges against the Defendant and once again terminated him. The Defendant was subsequently indicted in the matter herein in October 2001, approximately *one year and two months* following the city's discovery of the evidence allegedly supporting the indictment.

LAW AND ARGUMENT

I. The City's Delay of a Year and Two Months from the Date of the Receipt of the Investigation by BCI to the Issuance of the Indictment Resulted in Actual Prejudice to the Defendant.

The Ohio Supreme Court has held that pre-indictment delay which results in actual prejudice to a defendant may give rise to dismissal of criminal charges as a violation of Due Process rights under Section 16, Article I of the Ohio Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. **State v. Luck**, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984).

The actions of both the prosecutor's office and the Police Department of New Philadelphia have resulted in such a violation of Due Process Rights. The City and the Defendant submitted the matter to a mutually agreed upon arbitrator, who saw fit to reinstate the Defendant, in spite of the charges. Dissatisfied with that result, the City continually threatened Defendant with criminal prosecution if he did not voluntarily resign from the Department.

The extended delay between the investigation and the indictment has further resulted in damage to the Defendant's reputation in the Police Department and the community. There has been extensive negative news coverage in this small town, thereby jeopardizing Defendant's chances of obtaining a fair trial.

Courts have also held that a delay in indictment caused by an initial pursuit of civil remedies without relief can be determined to violate Due Process rights. **The City of Bowling Green v. Dickinson**, 19 Ohio Misc.2d 9, 483 N.E.2d 500 (Mun. Crt. 1984). In that case, an umpire was assaulted at a baseball game. He chose to pursue civil remedies first. When those failed to produce the desired result, criminal charges were

filed. The court held that the pre-indictment delay was prejudicial and dismissed the charges. **Id.**

That is the case here. The City chose to go ahead with civil procedures to obtain the result they desired, the termination of the Defendant. When the arbitrator chose to reinstate the Defendant in opposition to the City's desire, they instituted criminal charges against him.

For the foregoing reasons, the indictment of the Defendant results in actual prejudice to his case and the charges should be dismissed.

II. The City and the Prosecutor's Office Had No Justifiable Reason for Delaying the Defendant's Indictment.

In **State v. Luck**, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984), the Supreme Court of Ohio stated that in order to sustain a Motion to Dismiss for a violation of Due Process Rights, the State must have had no justifiable reason for the delay in indictment. When the State has all the information necessary to issue an indictment yet does not there is no justifiable reason for the delay. **State v. Kelly**, 101 Ohio App.3d 700, 656 N.E.2d 419 (Ct. App. Montgomery County 1995). In that case, an undercover police officer obtained evidence against the Defendant sufficient to support an immediate indictment, but the warrant was not issued for another five months.

That is precisely the issue here. The City had the results of the B.C.I. investigation as early as August 2000 (see copy of letter from Prosecuting Attorney to Safety Director). This investigation yielded the basis for the indictment. However, the City did not issue the indictment until October 2001, a year and two months later. There was no justifiable reason for this delay, thus the charges against Defendant should be

dismissed as violation of his Due Process rights.

CONCLUSION

Based on the foregoing argument and authorities, the Defendant asserts that the City has violated Defendant's Due Process rights. Accordingly, Defendant respectfully requests the this Honorable Court to dismiss the charge against him.

Respectfully submitted,

THOMAS M. HANCULAK (006985)
Joseph W. Diemert, Jr.
& Associates Co., L.P.A.
1360 SOM Center Road
Cleveland, Ohio 44124
(440) 442-6800
(440) 442-0825 fax
Email diemertlaw@aol.com

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TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

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TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11:53

ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

~~CIVIL~~/CRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Tim Staley, c/o Staley Technologies, 1035 Front Street S.W., New Phila. OH 44663
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO.
Plaintiff/Defendant

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF TRIAL.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CONTACT THIS OFFICE UPON RECEIPT OF THIS SUBPOENA AT 330-364-8811 EXT. 3275 TO CONFIRM RECEIPT. ADDITIONALLY, PLEASE CALL THIS OFFICE, AFTER 1:00 P.M., THE DAY BEFORE AT THE ABOVE NUMBER TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert K. Stephenson Jr.
Signature

Attorney for (~~Defendant~~ Plaintiff)

Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the 7 day of JAN

20 02, I (served/~~was unable to serve~~) the above named individual by Sec.

Dated 1-7, 20 02

Sheriff of Tus County

By N. Catlin

Service fees:
Service and Return $ 1.00
Mileage 1.10
Misc. Fee
TOTAL $ 2.10

513593

ENTERED
JAN 3 2002
TIMOTHY A. HANLIN

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas
Tuscarawas County, Ohio

By Judie Dunn
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

2002 JAN -9 A 7:48
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TUSCARAWAS COUNTY OHIO
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2002 JAN -3 A 11:51
ROCKNE W. CLARKE CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXXXXCRIMINAL XX
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Ptl. Shawn Nelson (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO (Plaintiff/Defendant).

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF ~~TRIAL~~.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

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Witness fee of $ _____ paid by _____ attached.

Robert K. Stephenson Jr.
Signature — Attorney for ~~Defendant~~-Plaintiff — Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

2002 JAN 3 PM 3 29
CLERK OF COURTS
TUSCARAWAS COUNTY OHIO

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D.K.

Dated 1-7, 20 01

Sheriff of TUS County

By W. Colton

Service fees:
Service and Return $ 1.00
Mileage 1.10
Misc. Fee
TOTAL $ 2.10

513594

ENTERED

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas
Tuscarawas County, Ohio

By _____ Deputy Clerk

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TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11:50

ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

~~CIVIL~~ CRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Capt. Sheldon DeMattio (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF TRIAL.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

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TUSCARAWAS COUNTY OHIO
2002 JAN 3 PM 3 29
ROCKNE W. CLARKE
CLERK OF COURTS

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert K. Stephenson II
Signature — Attorney for ~~Defendant~~-Plaintiff — Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the 7 day of JAN 20 02, I (served/~~was unable to serve~~) the above named individual by

Dell

Dated 1-7, 20 02

Sheriff of TUS County

By H Tatlow

Service fees:
Service and Return $ 1.00
Mileage 1.10
Misc. Fee
TOTAL $ 2.10

$13595

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas
Tuscarawas County, Ohio

By Jodi Dunn
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

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Courthouse, New Philadelphia, Ohio 44663

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TUSCARAWAS COUNTY OHIO

2002 JAN -3 A 11:48

ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXXXCRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Ptl. Rocky Dusenberry (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF ~~TRIAL~~.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

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Witness fee of $ _____ paid by _____ attached.

Robert L. Stephenson II
Signature — Attorney for ~~(Defendant)~~-Plaintiff — Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

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Dell

Dated 1-7, 20 02

Sheriff of THU County

By N. Collon

Service fees:
Service and Return $ 1.00
Mileage 1.10
Misc. Fee
TOTAL $ 2.10 $135.96

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas
Tuscarawas County, Ohio

By _____ Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

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Courthouse, New Philadelphia, Ohio 44663

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TUSCARAWAS COUNTY OHIO

THE STATE OF OHIO

Case No. 2001 CR 10 0247

2002 JAN -3 A 11:49

vs

ROCKNE W. CLARKE
CLERK OF COURTS

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXXXCRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Chief Tom Staggers (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF TRIAL.

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Witness fee of $ _____ paid by _____ attached.

Robert L. Stephenson
Signature

Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

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RETURN ON SERVICE

On the 7 day of JAN

20 02, I (served/~~was unable to serve~~) the above named individual by

Desk

Dated 1-7, 20 02

Sheriff of TUSC County

By W Calla

Service fees:
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Misc. Fee
TOTAL $ 2.10

S13597

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COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN 9 A 7:

ROCKNE W. CLARKE
CLERK OF COURTS

WITNESS my hand and Seal of said Court this 3rd day of January, 2002

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas Tuscarawas County, Ohio

By _____ Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

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2002 JAN -3 A 11:47

ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXXXXXCRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Capt. Rich Calderon (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

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Robert K. Stephenson II
Signature

Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

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Sheriff of Tusc County

By W. Catton

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Misc. Fee
TOTAL $ 2.10

513598

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ROCKNE W. CLARKE, Clerk of the Court of Common Pleas Tuscarawas County, Ohio

By _____ Deputy Clerk

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ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXXXXCRIMINAL [X]
DUCES TECUM [ ]
GRAND JURY [ ]

To the Sheriff of MAHONING County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Dennis DiRenzo, c/o B.C.I. (Name) 904 Sahara Trail, Boardman, OH 44514 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 17th day of January, A.D. 20 02, at 9:15 * o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF TRIAL.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CONTACT THIS OFFICE UPON RECEIPT OF THIS SUBPOENA AT 330-364-8811 EXT. 3275 TO CONFIRM RECEIPT. ADDITIONALLY, PLEASE CALL THIS OFFICE AFTER 1:00 P.M., THE DAY BEFORE AT THE ABOVE NUMBER TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

FILED
TUSCARAWAS COUNTY OHIO
2002 JAN 11 A 10:03
ROCKNE W. CLARKE
CLERK OF COURTS

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert R. Stephenson
Signature

Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the 7 day of Jan 20 02, I (served/~~was unable to serve~~) the above named individual by

Residential Service

Dated 1-7, 20 02

Sheriff of Mahoning County

By Bruno Wojczuk

Service fees:
Service and Return $ 1.00
Mileage 8.80
Misc. Fee
TOTAL $ 9.80

F1685

ENTERED

WITNESS my hand and Seal of said Court this 3rd day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas
Tuscarawas County, Ohio

By _____ Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN 16 A 10: 10

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
vs.	:	JUDGMENT ENTRY-**NON-ORAL** CONSIDERATION CONDUCTED ON 1/9/2002-**PRIMARY JURY TRIAL** SCHEDULED TO COMMENCE ON 1/14/2002 AT 9:15 A.M. **CANCELLED**-DEFENDANT'S PENDING **MOTION TO DISMISS INDICTMENT** SCHEDULED FOR **EVIDENTIARY** HEARING ON **FRIDAY, 2/1/2002 AT, 12:00 P.M. (NOON)**-ORDERS ENTERED
DAVID CIMPERMAN, S.S. #[redacted] D.O.B. 6/29/64	:	
DEFENDANT	:	

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 1/9/2002 relative to the **Primary Jury Trial** scheduled to commence in this case on 1/14/2002 at **9:15 A.M.**

The Court

FINDS that a **Motion to Dismiss Indictment** has been filed by the Defendant and an **Evidentiary** Hearing should be scheduled in that regard. Consequently, the **Primary Jury Trial**

of 1/14/2002 should be **cancelled** and rescheduled only should that be appropriate after the Court considers the pending **Motion to Dismiss Indictment.**

It is therefore

ORDERED, ADJUDGED AND DECREED that the **Primary Jury Trial** scheduled to commence in this case on Thursday, 1/14/2002 at 9:15 A.M. is **cancelled.**

ORDERED, ADJUDGED AND DECREED that the **Motion to Dismiss Indictment** filed by Defendant is scheduled for an **Evidentiary** Hearing on **Friday, 2/1/2002 at 12:00 P.M. (Noon).**

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

Date: 1/15/2002

cc: / Court Administrator's Office
/ Asst. Pros. Atty. Robert R. Stephenson II
/ Atty. Thomas M. Hanculak,
/ Tusc. County, Ohio Pros. Office
Attn: Tina Swank
/ Court

EEO'F/lrb

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN 28 P 3:24
ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

vs

DAVID CIMPERMAN

Case No. 2001 CR 10 0247

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL [X]
DUCES TECUM [ ]
GRAND JURY [ ]

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Capt. Rich Calderon (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 1st day of February, A.D. 20 02, at 12:00 P.M. o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO (Plaintiff/Defendant).

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CALL THIS OFFICE THE DAY BEFORE AT 330-364-8811 EXT. 3275 AFTER 1:00 P.M. TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert K. Stephenson
Signature

Attorney for (Defendant-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____
TOTAL $_____ $13898

WITNESS my hand and Seal of said Court this 28th day of January, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas Tuscarawas County, Ohio

By _____
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

ENTERED

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JAN 28 P 3:24

ROCKNE W. CLARKE
CLERK OF COURTS

THE STATE OF OHIO

Case No. 2001 CR 10 0247

vs

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

CRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Capt. Rich Calderon (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 1st day of February, A.D. 20 02, at 12:00 P.M. o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CALL THIS OFFICE THE DAY BEFORE AT 330-364-8811 EXT. 3275 AFTER 1:00 P.M. TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN 28 P 3:25
ROCKNE W. CLARKE
CLERK OF COURTS

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert L. Stephenson
Signature — Attorney for (Defendant-Plaintiff) — Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the 29 day of JAN 20 02, I (served/~~was unable to serve~~) the above named individual by

Dell

Dated 1-29, 20 02

Sheriff of Tusc County, Ohio

By W. Calton

Service fees:
Service and Return $ 1.00
Mileage 1.10
Misc. Fee
TOTAL $ 2.10

$13898

ENTERED

WITNESS my hand and Seal of said Court this 28th day of January, 2002

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas Tuscarawas County, Ohio

By _____ Deputy Clerk

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN 30 A 7:35
ROCKNE W. CLARKE
CLERK OF COURTS

P.O. Box 628
New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN 30 A 11: 04
ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

STATE OF OHIO, Plaintiff, vs. DAVID CIMPERMAN, Defendant.	CASE NO. 2001-CR-10-0247 JUDGE O'FARRELL **DEFENDANT'S MOTION TO CONTINUE HEARING ON MOTION TO DISMISS**

ENTERED

The Defendant, DAVID CIMPERMAN. by and through counsel, moves this Court for a Continuance of the hearing on his Motion to Dismiss which is schedule for February 1, 2002 at 12:00 o'clock p.m. since his only witness, Michael W. Piotrowski, is out of State and unavailable. Defendant further states that this Motion is not made for the purposes of delay, that the absence of Michael W. Piotrowski will severely prejudice his Motion to Dismiss.

Notice of Mr. Piotrowski's absence from the State as well as his dates of availability is attached as Exhibit "A".

Respectfully submitted,

Thomas M. Hanculak (0006985)
Joseph W. Diemert Jr. & Assoc. L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
E-mail: diemertlaw@aol.com
Counsel for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Dismiss and Memorandum in Support has been served via facsimile (330-364-4135) and regular U.S. Mail, postage prepaid to Robert R. Stephenson, II, Assistant Prosecuting Attorney, TUSCARAWAS County, Ohio, 125 E. High Avenue, New Philadelphia OH 44663, this 30 day of January, 2002.

THOMAS M. HANCULAK

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2002 JAN 30 A 11: 04
ROCKNE W. CLARKE
CLERK OF COURTS

X:\Gen. Clients\F.O.P\Cimperman pleadings\Mot.Continue.wpd

Fraternal Order of Police, Ohio Labor Council, Inc.

MAIN OFFICE:
222 East Town Street
Columbus, OH 43215
(614) 224-5700
1-800-FOP-OLCI
Fax: (614) 224-5775

NORTHEAST OFFICE:
2721Manchester Road
Akron, OH 44319
(330) 753-7080
1-888-FOP-OLCI
Fax: (330) 753-8955

SOUTHWEST OFFICE
10921 Reed Hartman Highway #317
Blue Ash, OH 45242
(513) 984-6040
1-877-FOP-OLCI
Fax: (513) 984-9561

January 29, 2001

Mr. Thomas Hanculak, Esq.
Joseph W. Diemert, Jr. & Associates LPA
1360 S.O.M. Center Road
Cleveland OH 44124-2189
Via Fax and Regular U.S. Mail: 440-442-0825

RE: Availability for Testimony:
Cimperman Matter

Dear Mr. Hanculak,

Pursuant to our recent telephone conversation, please allow this letter to constitute notice that I am unavailable to testify in the Cimperman matter on the 1st of February, 2002. On that date I am in Florida on vacation. I will be returning from Florida on Wednesday, the 6th of February, and am available on February 7th, 8th, 11th, 12th, 15th, 22nd, 25th and 26th.

If you need additional dates where I am available, please don't hesitate in contacting me.

Very truly yours,

Michael W. Piotrowski
General Counsel

MWP:tw

cc: file

C:\My Documents\Piotrowski\new philly\hanculak-cimperman-discipline 01-29-02

JOSEPH W. DIEMERT, JR. & ASSOCIATES CO., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
Fax: (440) 442-0825
e-mail: diemertlaw@aol.com

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 330-343-4682

To: ROCKNE W. CLARK, CLERK
TUSCARAWAS COUNTY COMMON PLEAS COURT

From: THOMAS M. HANCULAK

Client/Matter: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Date: January 30, 2002

DOCUMENTS	NUMBER OF PAGES*
(SEE ATTACHED)	

COMMENTS:

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

*NOT INCLUDING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (440) 442-6800.

Law Offices
Joseph W. Diement, Jr. & Associates Co., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124-2189
E-Mail: diemertlaw@aol.com

Joseph W. Diement, Jr.
Thomas M. Hanculak
Diane A. Calta
Jeffrey J. Sokolowski

Telephone
(440) 442-6800

Fax
(440) 442-0825

January 30, 2002

COPY VIA FACSIMILE 330-343-4682
ORIGINAL SENT REGULAR U.S. MAIL

Rockne W. Clarke, Clerk
Tuscarawas County Common Pleas Court
125 E. High St.
P.O. Box 628
New Philadelphia OH 44663

RE: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Dear Clerk:

Enclosed please find an original plus one of the Motion to Continue in the above captioned matter. Please file the original in your usual manner and return the extra copy in the enclosed self-addressed, stamped envelope. Thank you.

Very truly yours,

Thomas M. Hanculak

TMH/glt
tmhanculak@aol.com
Enclosure
cc: Robert R. Stephenson, II

X:\Gen. Clients\F.O.P\Cimperman\letters\Ltr.Clerk.mot.Continue.wpd

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 FEB -5 A 9:41

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,

PLAINTIFF

vs.

DAVID CIMPERMAN,
S.S. # [redacted] 998
D.O.B. 6/29/64

DEFENDANT

CASE NO. 2001 CR 10 0247

JUDGE
EDWARD EMMETT O'FARRELL

JUDGMENT ENTRY-**NON-ORAL** CONSIDERATION CONDUCTED ON 1/31/2002-DEFENDANT'S 1/30/2002 **MOTION TO CONTINUE 2/1/2002 EVIDENTIARY** HEARING CONSIDERED AND **GRANTED**-HEARING RESCHEDULED TO **THURSDAY, 2/21/2002 AT 12:00 P.M. (NOON)**-ORDERS ENTERED

ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division on 1/31/2002 on a **Non-Oral** basis relative to the Defendant's 1/30/2002 **Motion to Continue the Evidentiary** Hearing scheduled on 2/1/2002 relative to the Defendant's pending **Motion to Dismiss Indictment.**

The Court

FINDS that the Defendant's **Motion to Continue** is well taken and should be **Granted.**

It is therefore

ORDERED, ADJUDGED AND DECREED that Defendant's 1/30/2002 **Motion to Continue the Evidentiary** Hearing scheduled for 2/1/2002 is **Granted.** Said Hearing is **cancelled** and rescheduled to **Thursday, 2/21/2002 at 12:00 P.M. (Noon).**

IT IS SO ORDERED.

Edward O'Farrell

Edward Emmett O'Farrell, Judge

2/4/2002

Date

cc: Court Administrator's Office
Asst. Pros. Atty. Robert R. Stephenson II
Tusc. County, Ohio Pros. Office
Attn: Tina Swank
Atty. Thomas M. Hanculak
Court

ENTERED

EEO'F/lrb

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 FEB -6 P 2:02

ROCKNE W. CLARKE
CLERK OF COURTS

Case No. _____

vs

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of _____ County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ _____
(Name) (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of _____, A.D. 20 _____, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____.
Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ _____
Signature Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____ $14008
TOTAL $_____

WITNESS my hand and Seal of said Court this 6th day of February, 20 02

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By Tracy Burkhart
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 FEB -6 P 2:02

ROCKNE W. CLARKE
CLERK OF COURTS

Case No. _____

vs

_____

PRECIPE FOR SUBPOENA

CIVIL/CRIMINAL ☐
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: _____ (Name) _____ (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the _____ day of February, A.D. 20__, at _____ o'clock A.M., to testify as a witness in the above entitled action on behalf of the _____ (Plaintiff/Defendant).

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

_____

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

_____ (Signature) _____ (Attorney for ~~(Defendant-Plaintiff)~~) (Address)

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RETURN ON SERVICE

On the _____ day of _____

20 _____, I (served/was unable to serve) the above named individual by

_____

Dated _____, 20 _____

Sheriff of _____ County

By _____

Service fees:
Service and Return $_____
Mileage _____
Misc. Fee _____
TOTAL $_____ $14.09

WITNESS my hand and Seal of said Court this 6th day of February, 20 02

ROCKNE W. CLARKE, Clerk of the
Court of Common Pleas
Tuscarawas County, Ohio

By Lori J. Burkhart
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

Case No. 2001 CR 10 0247

THE STATE OF OHIO

2002 FEB -6 P 2:02

vs

ROCKNE W. CLARKE
CLERK OF COURTS

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXCIVIL/CRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Capt. Rich Calderon (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 21st day of February, A.D. 20 02, at 12:00 P.M. o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO Plaintiff/Defendant.

*EACH DAY THEREAFTER AT 9:00 A.M. UNTIL COMPLETION OF TRIAL.

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CALL THIS OFFICE THE DAY BEFORE AT 330-364-8811 EXT. 3275 AFTER 1:00 P.M. TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

FILED
2002 FEB 7 PM 1:59
ROCKNE W. CLARKE
CLERK OF COURTS

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert R. Stephenson
Signature

Attorney for (~~Defendant~~-Plaintiff) Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RECEIVED
FEB 7 2002
CLERK OF COURTS

RETURN ON SERVICE

On the 7 day of Feb
20 02, I (served/~~was unable to serve~~) the above named individual by

Clerk

Dated 2-7, 20 02

Sheriff of Tusc County, Ohio

By W. Colton

Service fees:
Service and Return $ 1.00
Mileage 1.10
Misc. Fee
TOTAL $ 2.10

$14008

WITNESS my hand and Seal of said Court this 6th day of February, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas Tuscarawas County, Ohio

2002 FEB -8 A 9:45
ROCKNE W. CLARKE
CLERK OF COURTS

By Lois J. Swihart
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

DISTRIBUTION
White–Sheriff's Return
Green–Serve
Canary–Clerk's
Pink–Attorney

TUSCARAWAS COUNTY COMMON PLEAS COURT

Courthouse, New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

THE STATE OF OHIO

Case No. 2001 CR 10 0247

2002 FEB -6 P 2:02

vs

ROCKNE W. CLARKE
CLERK OF COURTS

DAVID CIMPERMAN

PRECIPE FOR SUBPOENA

XXXXXCRIMINAL ☒
DUCES TECUM ☐
GRAND JURY ☐

To the Sheriff of TUSCARAWAS County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

SUBPOENA

TO: Chief Tom Staggers, (Name) c/o New Phila. Police Dept., New Phila. OH 44663 (Address)

You are ordered to appear before the Court of Common Pleas of Tuscarawas County, New Philadelphia, Ohio, on the 21st day of February, A.D. 20 02, at 12:00 P.M. o'clock A.M., to testify as a witness in the above entitled action on behalf of the STATE OF OHIO (Plaintiff/Defendant).

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

PLEASE CALL THIS OFFICE THE DAY BEFORE AT 330-364-8811 EXT. 3275 AFTER 1:00 P.M. TO VERIFY THAT THE ABOVE CASE IS GOING FORWARD ON SAID DATE AND TIME.

You may be held in contempt of Court for failure to appear. Present this subpoena to the Clerk of Courts' office after appearing. See the back of this form for your rights and duties under subpoena.

Witness fee of $ _____ paid by _____ attached.

Robert K. Stephenson
Signature

_____
Attorney for ~~Defendant~~ Plaintiff)

_____
Address

Contact the above signed Attorney/party if you have any questions or objections at ( ) _____ (phone #)

$ _____ DEPOSIT FOR SERVICE OF THIS WRIT

RECEIVED

RETURN ON SERVICE

On the 7 day of Feb 20 02, I (served/~~was unable to serve~~) the above named individual by

Rec'd

Dated 2-7, 20 02

Sheriff of Tusc County

By N. Catton

Service fees:
Service and Return $ 1.00
Mileage .10
Misc. Fee
TOTAL $ 2.10

5140.09

WITNESS my hand and Seal of said Court this 6th day of February, 20 02

ROCKNE W. CLARKE, Clerk of the Court of Common Pleas Tuscarawas County, Ohio

ROCKNE W. CLARKE CLERK OF COURTS

2002 FEB -8 A 9:45

FILED COURT OF COMMON PLEAS TUSCARAWAS COUNTY OHIO

By Lois J. Swihart
Deputy Clerk

P.O. Box 628
New Philadelphia, Ohio 44663

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 FEB 26 A 9:46

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
vs.	:	JUDGMENT ENTRY-**ORAL/ EVIDENTIARY** HEARING COMMENCED ON 2/21/02 PERTAINING TO DEFENDANT'S 1/7/2002 **MOTION TO DISMISS INDICTMENT**-HEARING RECESSED AND RESCHEDULED FOR CONCLUSION ON **TUESDAY, 3/19/02 AT 12:00 P.M. (NOON)**-ORDERS ENTERED
DAVID CIMPERMAN, S.S. #[redacted] D.O.B. 6/29/94	:	
DEFENDANT	:	

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division on 2/21/2002 relative to the 1/7/2002 **Motion to Dismiss Indictment** filed by the Defendant. An **Oral/Evidentiary** Hearing was scheduled.

The State of Ohio was represented by Robert R. Stephenson II, Assistant Tuscarawas County, Ohio Prosecuting Attorney. The Defendant was present in the Courtroom and represented by **Thomas M. Hanculak,** Joseph W. Diemert, Jr., & Associates, L.P.A., Attorneys at Law, Cleveland, Ohio.

The Court

FINDS that Hearing was commenced on 2/21/2002 but not concluded.

FINDS that the Hearing should be concluded on **Tuesday, 3/19/2002 at 12:00 P.M. (Noon).**

It is therefore

ORDERED, ADJUDGED AND DECREED that the **Oral/Evidentiary** Hearing commenced on 2/21/2002 pertaining to the Defendant's 1/7/2002 **Motion to Dismiss Indictment** is recessed and shall be concluded on **Tuesday, 3/19/2002 at 12:00 P.M. (Noon).**

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

2/25/2002
Date

cc: Court Administrator's Office
Asst. Pros. Atty. Robert R. Stephenson II
Atty. Thomas M. Hanculak
Court
EEO'F/lrb

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 MAR 21 P 4:01

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,

PLAINTIFF

vs.

DAVID CIMPERMAN,
S.S. #[redacted]
D.O.B. 6/29/64
HEIGHT-5'10"
WEIGHT-170 LBS.
EYE COLOR-BLUE
HAIR COLOR-BROWN
SEX-MALE
RACE-CAUCASIAN

DEFENDANT

CASE NO. 2001 CR 10 0247

JUDGE
EDWARD EMMETT O'FARRELL

JUDGMENT ENTRY-**ORAL** HEARING CONDUCTED ON 3/19/2002-**CHANGE OF PLEA** FROM **NOT GUILTY** TO **GUILTY** ENTERED TO INDICTMENT-ONE (1) COUNT **UNAUTHORIZED USE OF TELECOMMUNICATIONS PROPERTY (SECTION 2913.04 [B], OHIO REVISED CODE) (F-5)**-FINDINGS **DEFERRED**-DEFENDANT REFERRED TO **COMMUNITY CORRECTIONS DIVERSION PROGRAM-SUPERVISED DIVERSION** TO COMMENCE UPON DEFENDANT MAKING TELEPHONIC CONTACT WITH **COMMUNITY CORRECTIONS DIVERSION PROGRAM** PURSUANT TO THESE ORDERS-ALL COURT COSTS ASSESSED AGAINST DEFENDANT-ORDER TO CLERK TO CLOSE CASE FILE AND REMOVE FROM PENDING CASE DOCKET-ORDERS ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division on 3/19/2002 relative to the felony criminal

charge set forth in the Indictment issued in the September 2001 Term of the Grand Jury of Tuscarawas County, Ohio and filed at the Clerk's Office on 10/4/2001, charging David Cimperman, Social Security No. [redacted], d.o.b. 6/29/64, with one (1) count **Unauthorized Use of Telecommunication Property** in violation **2913.04 (B), Ohio Revised Code, a felony of the fifth degree.**

The State of Ohio has been represented in this case by **Robert R. Stephenson II,** Assistant Tuscarawas County, Ohio Prosecuting Attorney who was absent with permission of the Court. The Defendant was present in the Courtroom and represented by **Thomas M. Hanculak,** Joseph W. Diemert, Jr., & Associates Co., L.P.A., Attorneys at Law, Cleveland, Ohio.

The Court

FINDS that the Defendant, in open Court and on the record petitioned the Court for leave to enter a plea of **Guilty** to the felony criminal charge set forth in the Indictment. He did so after the Court reviewed with him the nature of the charge, the penalties which could be imposed if the Defendant was found **Guilty** of same; his constitutional and statutory rights and privileges; including his right to be represented by retained counsel, or pursuant to **Rule 44, Ohio Rules of Criminal Procedure** by appointed counsel; his right to a Trial by Jury, his right to confront witnesses against him, his right to have compulsory process for obtaining witnesses in his favor, and his right to require the State of Ohio to prove his guilt relating to the felony criminal charge set forth in the Indictment beyond a reasonable doubt at a Trial at which he could not be compelled to testify against himself but at which he would have an unqualified right to testify. The Court then explained to the

Defendant that the penalties which could be imposed in this case, if the Defendant is ultimately sentenced, are a six (6) month minimum to twelve (12) month maximum term of imprisonment in the Ohio Department of Rehabilitation and Correction and/or a Two Thousand Five Hundred Dollars ($2,500.00) fine. Further, the Court explained to the Defendant that an optional three (3) year period of **Post-Release Controls** could follow his release from prison after having completed the term of imprisonment should he ultimately be sentenced in this case. Further, the Court explained to the Defendant that if he violated conditions of supervision while under the optional **Post-Release Controls**, the **Ohio Parole Board** could return him to prison for up to a maximum of a total of fifty percent (50%) of the original prison term imposed. If the violation(s) of **Post-Release Controls** is a new felony offense, the Defendant could be returned to prison for the time remaining on **Post-Release Controls,** plus serve an additional prison term for the new crime(s) committed. Lastly, the Court informed the Defendant that there is no longer any "good time credit" in Ohio prisons.

FINDS that the Defendant's plea of **Guilty** offered to the Court on 3/19/2002 and pertaining to the felony criminal charge set forth in the Indictment, was **conditioned** upon the Defendant **not** being found **Guilty** but being referred to the **Community Corrections Felony Diversion Program** for a minimum of six (6) months and a maximum of one (1) year of supervision; that if said supervision was completed successfully, the **Guilty** plea offered by the Defendant would be **vacated** and the Indictment **dismissed** with prejudice to refiling. The Defendant also understood that if he failed to successfully complete the **Community Corrections Felony Diversion Program,** he could be

sentenced to the maximum sentence available pursuant to law. The Defendant further understood that if he did not successfully complete the **Community Corrections Felony Diversion Program,** he would **not** be entitled to other constitutional and statutory rights and privileges above, pertaining to Trial, etc., which he **waived** by the entry of his **Guilty** plea.

FINDS that prior to the entry of the plea of **Guilty** to the felony criminal charge set forth in the Indictment, the Defendant knowingly, intelligently and voluntarily **waived** all of the rights set forth above.

FINDS that upon the entry of the plea of **Guilty** by the Defendant on 3/19/2002 pertaining to the felony criminal charge set forth in the Indictment, the Court should **defer** the entry of any findings relative thereto and the Defendant should be referred to the **Community Corrections Felony Diversion Program** to commence supervision.

FINDS that all Court costs should be assessed against the Defendant for payment.

FINDS that the Defendant should be required to pay a Fifteen Dollar ($15.00) monthly **Supervision Fee** as directed by the **Community Corrections Felony Diversion Program** personnel.

FINDS that the Clerk of Courts should close this case file and remove it from the pending case docket subject to reopening upon the Defendant either successfully completing the **Diversion Program** or for further proceedings according to law.

It is therefore

ORDERED, ADJUDGED AND DECREED that the plea of **Guilty** entered in open Court and on the record by the Defendant on 3/19/2002 and pertaining to the felony criminal charge set forth in the Indictment is accepted by the Court as knowing, intelligent and voluntary and was conditioned upon the promises made to the Defendant as set forth above and as contained in the Orders of the Court which follow.

ORDERED, ADJUDGED AND DECREED that the Court **defers** any further findings in this case and refers the Defendant to the **Community Corrections Felony Diversion Program,** 2295 Reiser Avenue, S.E., New Philadelphia, Ohio 44663; Telephone: (330)339-7550, for the commencement of **Diversion Supervision.** The Defendant shall make telephone contact with the **Community Corrections Felony Diversion Program** personnel within seventy-two (72) hours of his receipt of a photocopy of this Judgment Entry from Mr. Hanculak. The Defendant shall be required to adhere to all instructions and directions given to him by the **Community Corrections Felony Diversion Program** personnel. Failure of the Defendant to successfully complete the **Community Corrections Felony Diversion Program** shall result in a finding of **Guilty** being entered relative

to the felony criminal charge set forth in the Indictment and, after Notice and Hearing, the imposition of sentence.

ORDERED, ADJUDGED AND DECREED that the Defendant shall pay a Fifteen Dollar ($15.00) monthly **Supervision Fee** as directed by personnel of the **Community Corrections Felony Diversion Program**.

ORDERED, ADJUDGED AND DECREED that all Court costs are assessed against the Defendant for payment.

ORDERED, ADJUDGED AND DECREED that the Clerk of Courts shall close this case file and remove it from the pending case docket subject to reopening upon the Defendant's successful completion of the **Diversion Program** or for other proceedings provided by law.

IT IS SO ORDERED.

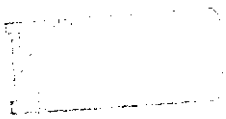
Edward Emmett O'Farrell, Judge

3/21/2002

Date

cc: Court Administrator's Office
Asst. Pros. Atty. Robert R. Stephenson II
Atty. Thomas Hanculak
Community Corrections Felony Diversion Program
Attn: Kory Halter, Director

EEO'F/lrb



In The Court of Common Pleas
Tuscarawas County, Ohio
General Trial Division

State of Ohio	:	Case No. 2001 CR 10 0247
Plaintiff	:	
	:	Judge Edward Emmett O'Farrell
vs.	:	
	:	
David Cimperman	:	
Defendant	:	***Notice of Filing Journal Entry***

To: Amanda K Spies Bornhorst, Prosecuting Attorney
125 East High Avenue
Room 220
New Philadelphia, OH 44663

You are hereby notified that a Court Order/Journal Entry has been filed with the Tuscarawas County Clerk of Courts which more fully appears on the Journal of this Court. This Journal Entry may be a **final appealable order** in the above captioned case.

March 22, 2002

Rockne W. Clarke
Clerk of Courts

By: _____
Deputy Clerk of Courts

In The Court of Common Pleas
Tuscarawas County, Ohio
General Trial Division

State of Ohio	:	Case No. 2001 CR 10 0247
Plaintiff	:	
	:	Judge Edward Emmett O'Farrell
vs.	:	
	:	
David Cimperman	:	
Defendant	:	***Notice of Filing Journal Entry***

To: David Cimperman
1841 Esther Ave
Akron, OH 44312

You are hereby notified that a Court Order/Journal Entry has been filed with the Tuscarawas County Clerk of Courts which more fully appears on the Journal of this Court. This Journal Entry may be a **final appealable order** in the above captioned case.

March 22, 2002

Rockne W. Clarke
Clerk of Courts

By: _____
Deputy Clerk of Courts

In The Court of Common Pleas
Tuscarawas County, Ohio
General Trial Division

State of Ohio	:	Case No. 2001 CR 10 0247
Plaintiff	:	
	:	Judge Edward Emmett O'Farrell
vs.	:	
	:	
David Cimperman	:	
Defendant	:	***Notice of Filing Journal Entry***

To: Atty. Thomas M Hanculak
1360 SOM Center Rd.
Cleveland, OH 44124

You are hereby notified that a Court Order/Journal Entry has been filed with the Tuscarawas County Clerk of Courts which more fully appears on the Journal of this Court. This Journal Entry may be a **final appealable order** in the above captioned case.

March 22, 2002

Rockne W. Clarke
Clerk of Courts

By: _____
Deputy Clerk of Courts

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 MAY 10 P 1:07

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

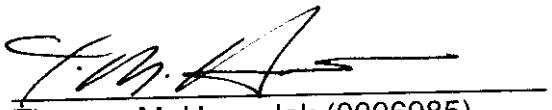
STATE OF OHIO,	CASE NO. 2001-CR-10-0247
Plaintff,	JUDGE EDWARD EMMETT O'FARELL
vs.	**MOTION TO VACATE PLEA**
DAVID CIMPERMAN,	
Defendant.	

ENTERED

The Defendant, DAVID CIMPERMAN, moves this Court for an Order vacating the plea of guilty entered on March 19, 2002 due to the fact that the plea was not knowingly and intelligently made and that certain cautionary instructions were not provided to him as mandated by Ohio Revised Code Section 2929.29(B)(1).

Thus, for these reasons, and for the reasons set forth in the attached brief, it is respectfully requested that the plea of guilty entered by the Defendant on March 19, 2002 be vacated.

Respectfully submitted,



Thomas M. Hanculak (0006985)
Joseph W. Diemert Jr. & Assoc. L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
(440) 442-0825- fax
E-mail: diemertlaw@aol.com
Counsel for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via regular U.S. Mail, postage prepaid to Robert R. Stephenson, II, Assistant Prosecuting Attorney, Tuscarawas County, Ohio, 125 E. High Avenue, New Philadelphia OH 44663, this 8th day of May, 2002.

THOMAS M. HANCULAK

BRIEF IN SUPPORT OF MOTION TO VACATE

STATEMENT OF CASE

On March 19, 2002, DAVID CIMPERMAN, a police officer with the City of New Philadelphia, Ohio entered a plea of guilty to the indictment that was issued against him in case number 2001-CR-10-0247, that being the unauthorized use of telecommunications property in violation of Ohio Revised Code Section 2913.04(B).

That plea, as set forth in the Judgment Entry of this Court dated March 21, 2002, was conditioned upon not being found guilty, but being referred to the Community Corrections Felony Diversion Program for a minimum of six months and a maximum of one year of supervision, knowing that if this supervision was completed successfully, the guilty plea entered by Mr. Cimperman would be vacated and the indictment would be dismissed with prejudice to the re-filing. In effect, Mr. Cimperman was advised, and he understood that since this plea of guilty was not being accepted by the Court, it would not be considered to be a conviction under the law. (See Affidavit of David Cimperman, attached as Exhibit A.)

However, Mr. Cimperman was never advised either by counsel or the Court that the Director of Public Safety shall terminate the employment of a member of a police department who has "plead guilty to a felony" as is set forth in Ohio Revised Code Section 737.052(B)(2)(a)(i). Apparently under the authority of that Code Section, the City of New Philadelphia Safety Director has advised Mr. Cimperman in writing that his "plea of guilty" mandates termination, and has instituted those termination proceedings.

As a result, Mr. Cimperman moves to vacate the plea entered by him on the basis that it was not fully knowingly and intelligently made, and that certain cautionary instructions were not provided to him as mandated by the Ohio Revised Code.

LAW AND ARGUMENT

I UNDER THE TOTALITY OF CIRCUMSTANCES, DAVID CIMPERMAN'S PLEA OF GUILTY WAS NOT KNOWINGLY AND INTELLIGENTLY MADE.

The requirement that a plea of guilty to a felony charge by a defendant must be made knowingly and intelligently is established in Criminal Rule 11(C). Likewise, in construing Rule 11, the Courts have consistently held that where guilty pleas are not knowingly voluntarily and intelligently made, they are subject to being vacated. *State v. Mikulic* (1996), 116 Ohio App.3d 787, 689 NE2d 116.

Similarly, courts have determined that due to the fact that guilty pleas constitute waivers of significant constitutional rights, it must represent a voluntary and intelligent choice among alternative courses of action open to the defendant. *State v. Anderson* (1995), 108 Ohio App.3d 5, 669 NE2d 865.

Courts, in determining whether or not a plea entered by a defendant complied with the mandates of Rule 11, have employed a totality of the circumstances test and ask the question of whether or not the defendant subjectively understood the implications of his plea and the rights that he was waiving. The test to be employed, in effect, is then whether or not the circumstance surrounding the plea prejudiced the defendant in that he would not have plead guilty if all the facts and circumstances would

have been made known to him. *State v. Gales* (1999), 131 Ohio App.3d 56, 721 NE2d 497.

As set forth in Mr. Cimperman's affidavit, he was simply unaware, nor was he advised, that Ohio Revised Code Section 737.052(B)(2)(a)(i) seemingly mandates that a Director of Safety remove any police officer who "pleads guilty" to a felony offense. As was thought in this case, this Section is devoid of any requirement that the officer actually be found guilty, sentenced, and thus convicted.[1]

Thus, since Mr. Cimperman was unaware of the supposed ramifications of 737.052, his plea was not a voluntary and intelligent choice among alternative courses of action open to him.

II THE PLEA SHOULD BE VACATED BECAUSE MR. CIMPERMAN WAS NOT PROVIDED WITH MANDATORY AND CAUTIONARY INSTRUCTIONS

Ohio Revised Code Section 2929.29(B)(1) became effective on October 16, 1996 as a part of HB 566, the same bill that established the apparent termination mandates of 737.052 as outlined above.

Section 2929.29 mandates that a certain cautionary instruction be provided to a police officer before a defendant is allowed to plead guilty to a felony offense. That Section, in pertinent part, reads as follows:

---

[1]This Section became effective on October 16, 1996 upon the passage of House Bill 566. The testimony presented to the legislative committee considering the Bill indicated that its purpose was to insure that police officers who were "convicted" of a felony be removed. For whatever reason, that language never made its way into the final draft.

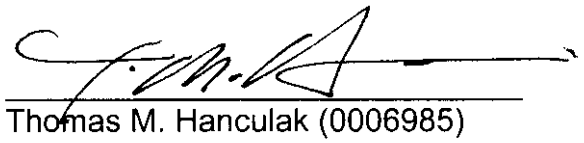
> Prior to accepting a plea of guilty to an indictment, information, or complaint charging a felony, the court shall determine whether the defendant is a peace officer. If the court determines that the defendant is a peace officer, it shall address the defendant personally and provide the following advisement to the defendant that shall be entered in the record of the court.
>
> "You are hereby advised that conviction of the felony offense to which you are pleading guilty will result in the termination of your employment as a peace officer and in your decertification as a peace officer pursuant to the laws of Ohio."
>
> Upon the request of the defendant, the court shall allow the defendant additional time to consider the appropriateness of the plea of guilty in light of the advisement described in Division B(1) of this Section.
>
> The court shall not accept a plea of guilty of a defendant who is a peace officer unless, in addition to any other procedures required under the Rules of Criminal Procedure, the court determines that the defendant voluntarily and intelligently enters the plea after being given the advisement described in Division B(1) of this Section.

Thus, Mr. Cimperman is of the opinion that since this cautionary instruction was not provided to him, that the plea entered by him must be vacated.

CONCLUSION

For the reasons set forth above, it is respectfully requested that this Court vacate the plea of guilty entered by the Defendant, David Cimperman and that this case be returned to the regular trial docket.

Respectfully submitted,



Thomas M. Hanculak (0006985)
Joseph W. Diemert Jr. & Assoc. L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
E-mail: diemertlaw@aol.com
Counsel for Defendant

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STATE OF OHIO)
) SS AFFIDAVIT OF **DAVID CIMPERMAN**
COUNTY OF TUSCARAWAS)

The Affiant, **DAVID CIMPERMAN**, being fully sworn according to law, deposes and states as follows:

1. That as a Defendant in Case No. 2001 CR 10 0247, I entered a plea of guilty to the indictment against me, that being one count of unauthorized use of telecommunications property in violation of Ohio Revised Code Section 2913.04(B), a felony of the fifth degree.

2. The plea that I entered was conditioned upon not being found guilty, but being referred to the Community Corrections Felony Diversion Program for a minimum of six months and a maximum of one year of supervision, knowing that if this supervision was completed successfully, the guilty plea entered by me would be vacated and the indictment would be dismissed with prejudice to re-filing. In effect, I was advised, and I understood that my plea of guilty, if not accepted, would not be considered to be a conviction under Ohio law.

3. However, I was not advised by anyone that the Director of Public Safety shall terminate the employment of a member of a police department, such as myself, who has plead guilty to a felony as set forth in Ohio Revised Code Section 737.052(B)(2)(a)(i).

4. Under the real or apparent authority of 737.052, the City of New Philadelphia Safety Director has advised me in writing that my plea of guilty mandates my termination.

5. Thus, at the time I entered the plea to this Court, my plea was not a voluntary and intelligent choice among alternative courses of action open to me, nor did I subjectively understand the implications of the plea and the rights I was waiving.

6. Additionally, at the time I entered my plea, I was not advised that entering just such a plea would result in termination of my employment as a peace officer, a cautionary instruction that must be provided to me as mandated by Ohio Revised Code Section 2929.29(B)(1).

7. For these reasons, I respectfully request that the plea entered by me on March 19, 2002 be vacated.

FURTHER AFFIANT SAYETH NAUGHT.

DAVID CIMPERMAN

SWORN TO before me this 22 day of April, 2002, in the City of AKRON, County of SUMMIT, Ohio

NOTARIAL SEAL STATE OF OHIO

LORRIE L. WEEKLEY, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires Oct. 2, 2002

X:\Gen. Clients\F.O.P\Cimperman\pleadings\aff.cimperman.wpd

EXHIBIT
tabbies
A

Law Offices

Joseph W. Diement, Jr. & Associates, L.P.A.

1360 S.O.M. Center Road
Cleveland, Ohio 44124-2820
E-Mail: diemertlaw@aol.com

Joseph W. Diement, Jr.
Thomas M. Hanculak
Diane A. Calta
Jeffrey J. Sokolowski

Telephone
(440) 442-6800

Fax
(440) 442-0825

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 MAY 10 P 1:05

ROCKNE W. CLARKE
CLERK OF COURTS

FILED
COURT OF COMMON P
TUSCARAWAS COUNTY

2002 MAY 10 P

ROCKNE W. CLARI
CLERK OF COURT

May 8, 2002

Rockne W. Clarke, Clerk
Tuscarawas County Common Pleas Court
125 E. High St.
P.O. Box 628
New Philadelphia OH 44663

RE: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Dear Clerk:

Enclosed please find an original plus two of the Motion to Vacate Plea in the above captioned matter. Please file the original in your usual manner and return the extra copy in the enclosed self-addressed, stamped envelope. Thank you.

Very truly yours,

Thomas M. Hanculak

TMH/cmg
tmhanculak@aol.com
Enclosure
cc: Robert R. Stephenson, II
David Cimperman
Mike Piotrowski (via facsimile)

X:\Gen. Clients\F.O.P\Cimperman\letters\ct.mot.vacate.wpd

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 MAY 21 P 1:00

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
	:	
	:	JUDGMENT ENTRY-NON-ORAL CONSIDERATION CONDUCTED ON 5/20/2002-DEFENDANT'S 5/10/2002 **MOTION TO VACATE PLEA** CONSIDERED AND **GRANTED-GUILTY** PLEA ENTERED ON 3/19/2002 AND JOURNALIZED BY JUDGMENT ENTRY OF 3/21/2002 TO ONE COUNT **UNAUTHORIZED USE OF TELECOMMUNICATIONS PROPERTY (SECTION 2913.04[B], O.R.C.) (F-5) VACATED-NOT GUILTY PLEA** REINSTATED-DEFENDANT'S PARTICIPATION IN FELONY DIVERSION PROGRAM TERMINATED-PRIMARY JURY TRIAL SCHEDULED FOR **TUESDAY, 7/23/2002, AT 9:15 A.M.**-ORDERS ENTERED
vs.	:	
DAVID CIMPERMAN,	:	
S.S. # [redacted]998	:	
D.O.B. 6/29/64	:	
DEFENDANT	:	

ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 5/20/2002 on a **Non-Oral** basis relative to the 5/10/2002 **Motion to Vacate Plea** filed by Defendant, David Cimperman, relative to the plea of **Guilty** entered on 3/19/2002 and journalized by Judgment Entry of 3/21/2002 of one (1) count

Unauthorized Use of Telecommunications Property in violation of **Section 2913.04(B), Ohio Revised Code, a felony of the fifth degree.**

The Court

FINDS that the Defendant's participation in the Felony Diversion Program should be terminated effective 5/20/2002.

FINDS that the 5/10/2002 **Motion to Vacate Plea** should be granted for the reason that the Defendant was not cautioned as required by **Section 2929.29(B)(1), Ohio Revised Code.**

It is therefore

ORDERED, ADJUDGED AND DECREED that the plea of **Guilty** entered by the Defendant on 3/19/2002 and journalized by Judgment Entry of 3/21/2002 pertaining to the count of **Unauthorized Use of Telecommunications Property** in violation of **Section 2913.04(B), Ohio Revised Code, a felony of the fifth degree**, is **Vacated**. The Defendant's previously entered **Not Guilty** plea is reinstated, the **Diversion Orders** contained in the Court's 3/21/2002 Judgment Entry are terminated and a **Primary Jury Trial** is scheduled for **Tuesday, 7/23/2002, at 9:15 A.M.**

ORDERED, ADJUDGED AND DECREED that the statutory speedy Trial time period for the Trial of the Indictment in this case as mandated by **Section 2945.71(C)(2), Ohio Revised Code,**

is enlarged to include the rescheduled Primary Jury Trial date of 7/23/2002 upon the authority of **Sections 2945.72(E) and (H), Ohio Revised Code.**

ORDERED, ADJUDGED AND DECREED that the Clerk of Courts shall reopen this case file and place it on the Court's pending case docket.

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

Date: 5/30/2002

cc: ✓Court Administrator's Office
✓Asst. Tusc. County, Ohio, Pros. Atty. Robert R. Stephenson II
✓Atty. Thomas M. Hanculak
✓Felony Diversion Program
Attention: Kory Halter, Director
✓Court

ENTERED

EEO'F/pll

COURT OF COMMON PLEAS

GENERAL TRIAL DIVISION

Tuscarawas County, Ohio

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JUL 29 A 9:28

ROCKNE W. CLARKE
CLERK OF COURTS

EDWARD EMMETT O'FARRELL
JUDGE

101 EAST HIGH AVENUE
SUITE 202
NEW PHILADELPHIA, OHIO 44663-2599
(330) 364-8811
(330) 602-8811 FAX

July 26, 2002

Kory A. Halter
Director
Community Corrections Program
2295 Reiser Avenue S.E.
New Philadelphia, Ohio 44663

ENTERED

Re: **State v. David Cimperman**
Case No. 2001 CR 10 0247

Dear Ms. Halter:

Enclosed please find a Judgment Entry which reflects the action the Court has taken in this case on 7/23/2002. As we discussed in our telephone conference on 7/23/2002, prior to Mr. Cimperman withdrawing his **reinstated plea** of **Not Guilty** and entering a plea of **No Contest** to the felony criminal charge set forth in the Indictment, I apprised you that the balance of Mr. Cimperman's **Diversion Program** should **not** exceed two and one-half (2 1/2) months from 7/23/2002. I apprised the Defendant and his attorney, Mr. Hanculak, that you would recommend **termination,** successfully, of participation in the **Felony Diversion Program** as soon as you deem that to be appropriate but that, in any event, Mr. Cimperman's remainder of **Diversion** would not exceed two and one-half (2 1/2) months from 7/23/2002.

If you have any questions concerning this matter, please contact me at your convenience.

Very truly yours,

Edward O'Farrell

Edward Emmett O'Farrell
Judge

EEO'F/lrb

Enc.

cc: Asst. Pros. Atty. Robert R. Stephenson II
Atty. Thomas Hanculak

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 JUL 29 A 9:28

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
	:	
	:	JUDGMENT ENTRY-**ORAL** HEARING CONDUCTED ON 7/23/2002-**PRIMARY JURY TRIAL CANCELLED-CHANGE OF PLEA** FROM **NOT GUILTY** TO **NO CONTEST** ENTERED TO INDICTMENT-ONE (1) COUNT **UNAUTHORIZED USE OF TELECOMMUNICATIONS PROPERTY (SECTION 2913.04 [B]. OHIO REVISED CODE) (F-5)**-FINDINGS **DEFERRED**-DEFENDANT REFERRED TO **COMMUNITY CORRECTIONS DIVERSION PROGRAM-SUPERVISED DIVERSION** TO RECOMMENCE ON 7/23/2002-ALL ADDITIONAL COURT COSTS ASSESSED AGAINST THE STATE OF OHIO AND PAYMENT **WAIVED**-ORDER TO CLERK TO CLOSE CASE FILE AND REMOVE FROM PENDING CASE DOCKET-ORDERS ENTERED
vs.	:	
	:	
DAVID CIMPERMAN,	:	
S.S. #[redacted]	:	
D.O.B. 6/29/64	:	
HEIGHT-5'10"	:	
WEIGHT-170 LBS.	:	
EYE COLOR-BLUE	:	
HAIR COLOR-BROWN	:	
SEX-MALE	:	
RACE-CAUCASIAN	:	
DEFENDANT	:	

ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division on 7/23/2002 relative to the felony criminal charge set forth in the Indictment issued in the September 2001 Term of the Grand Jury

of Tuscarawas County, Ohio and filed at the Clerk's Office on 10/4/2001, charging David Cimperman, Social Security No. [redacted], d.o.b. 6/29/64, with one (1) count **Unauthorized Use of Telecommunications Property** in violation of **Section 2913.04 (B), Ohio Revised Code, a felony of the fifth degree.**

The State of Ohio was represented by **Robert R. Stephenson II,** Assistant Tuscarawas County, Ohio Prosecuting Attorney. The Defendant was present in the Courtroom and represented by **Thomas M. Hanculak,** Joseph W. Diemert, Jr., & Associates Co., L.P.A., Attorneys at Law, Cleveland, Ohio.

The Court

FINDS that the Defendant, in open Court and on the record, petitioned the Court for leave to enter a plea of **No Contest** to the felony criminal charge set forth in the Indictment. He did so after the Court reviewed with him the nature of the charge, the penalties which could be imposed if the Defendant was found **Guilty** of same; his constitutional and statutory rights and privileges; including his right to be represented by retained counsel, or pursuant to **Rule 44, Ohio Rules of Criminal Procedure,** by appointed counsel; his right to a Trial by Jury, his right to confront witnesses against him, his right to have compulsory process for obtaining witnesses in his favor, and his right to require the State of Ohio to prove his guilt relating to the felony criminal charge set forth in the Indictment beyond a reasonable doubt at a Trial at which he could not be compelled to testify against himself but at which he would have an unqualified right to testify. The Court then explained to the Defendant that the penalties which could be imposed in this case, if the Defendant

is ultimately sentenced, are a six (6) month minimum to a twelve (12) months maximum term of imprisonment in the Ohio Department of Rehabilitation and Correction and/or a Two Thousand Five Hundred Dollar ($2,500.00) fine. Further, the Court explained to the Defendant that an optional three (3) year period of **Post-Release Controls** could follow his release from prison after having completed the term of imprisonment should he ultimately be sentenced in this case. Further, the Court explained to the Defendant that if he violated conditions of supervision while under the optional **Post-Release Controls,** the **Ohio Parole Board** could return him to prison for up to a maximum of a total of fifty percent (50%) of the original prison term imposed. If the violation (s) of **Post-Release Controls** is a new felony offense, the Defendant could be returned to prison for the time remaining on **Post-Release Controls,** plus serve an additional prison term for the new crime(s) committed. Lastly, the Court informed the Defendant that there is no longer any "good time credit" in Ohio Prisons.

FINDS that the Defendant's plea of **No Contest** offered to the Court on 7/23/2002 and pertaining to the felony criminal charge set forth in the Indictment, was conditioned upon the Defendant **not** being found guilty but being referred to the **Community Corrections Felony Diversion Program** for a maximum of two and one-half (2 1/2) months added to the two (2) months he has already served under **Diversion Orders** in this case; that if said supervision was completed successfully, the **No Contest** plea offered by the Defendant would be **vacated** and the Indictment dismissed with prejudice to refiling. The Defendant also understood that if he fails to successfully complete the

Community Corrections Felony Diversion Program, he could be sentenced to the maximum sentence available pursuant to law. The Defendant further understood that if he did not successfully complete the **Community Corrections Felony Diversion Program,** he would not be entitled to other constitutional and statutory privileges above, pertaining to Trial, etc., which he **waived** by the entry of his **No Contest** plea.

FINDS that prior to the entry of **No Contest** to the felony criminal charge set forth in the Indictment, the Defendant knowingly, intelligently and voluntarily **waived** all of the rights set forth above.

FINDS that upon the entry of the plea of **No Contest** by the Defendant on 7/23/2002 pertaining to the felony criminal charge set forth in the Indictment, the Court should defer the entry of any Findings relative thereto. The Defendant should be referred to the **Community Corrections Felony Diversion Program** to recommence supervision.

FINDS that all additional Court costs should be assessed against the State of Ohio and payment **waived.**

FINDS that the Defendant should be required to pay a Fifteen Dollar ($15.00) monthly Supervision Fee as directed by the **Community Corrections Felony Diversion Program.**

FINDS that the **Primary Jury Trial** scheduled to commence on 7/23/2002 should be **cancelled.**

FINDS that the Clerk of Courts should close this case file and remove it from the pending case docket subject to reopening upon the Defendant either successfully completing the **Felony Diversion Program** or for further proceedings according to law.

It is therefore

ORDERED, ADJUDGED AND DECREED that the plea of **No Contest** entered in open Court and on the record by the Defendant on 7/23/2002 and pertaining to the felony criminal charge set forth in the Indictment is accepted by the Court as knowing, intelligent and voluntary and was conditioned upon the promises made to the Defendant as set forth above and as contained in the Orders of the Court which follow.

ORDERED, ADJUDGED AND DECREED that the Court defers any further Findings in this case and refers the Defendant to the **Community Corrections Felony Diversion Program,** 2295 Reiser Avenue, S. E., New Philadelphia, Ohio 44663; Telephone: (330)339-7550, for the recommencement of **Diversion Supervision.** The Defendant shall be required to adhere to all instructions given to him by the **Community Corrections Felony Diversion Program** personnel. Failure of the Defendant to successfully complete the **Felony Diversion Program** shall result in a Finding of **Guilty** being entered relative to the felony criminal charges set forth in the Indictment, and, after Notice and Hearing, the imposition of sentence.

ORDERED, ADJUDGED AND DECREED that the Defendant shall pay a Fifteen Dollar ($15.00) monthly **Supervision Fee** as directed by personnel of the **Community Corrections Felony Diversion Program .**

ORDERED, ADJUDGED AND DECREED that the **Primary Jury Trial** scheduled to commence on 7/23/2002 is **cancelled.**

ORDERED, ADJUDGED AND DECREED that all additional Court costs are assessed against the State of Ohio and payment is **waived.**

ORDERED, ADJUDGED AND DECREED that the Clerk of Courts shall close this case file and remove it from the pending case docket, subject to reopening upon the Defendant's successful completion of the **Felony Diversion Program** or for other proceedings provided by law.

IT IS SO ORDERED.

Edward Emmett O'Farrell, Judge

7/29/2002
Date

cc: Court Administrator's Office
Asst. Pros. Atty. Robert R. Stephenson II
Atty. Thomas M. Hanculak
Community Corrections Felony Diversion Program
Attn: Kory Halter, Director

ENTERED

EEO'F/lrb

COURT OF COMMON PLEAS

GENERAL TRIAL DIVISION

Tuscarawas County, Ohio

101 EAST HIGH AVENUE
SUITE 202
NEW PHILADELPHIA, OHIO 44663-2599
(330) 364-8811
(330) 602-8811 FAX

COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 SEP 23 P 1:00

RONNIE W. CLARKE
CLERK OF COURTS

EDWARD EMMETT O'FARRELL
JUDGE

September 20, 2002

Thomas M. Hanculak
Attorney at Law
1360 S.O.M. Center Road
Cleveland, Ohio 44124-2189

Re: State of Ohio v. David Cimperman
Case No. 2001 CR 10 0247

Dear Mr. Hanculak:

I have received a faxed copy of your 9/17/2002 letter with reference to the above-designated case.

After receiving your letter I contacted Kory Halter, Director of the Community Corrections Felony Diversion Program, and inquired as to the anticipated termination date of Mr. Cimperman's participation in the Felony Diversion Program. Ms. Halter apprises me that date is 10/14/2002. Therefore, notwithstanding the fact that Mr. Cimperman has completed certain specific requirements of the program, his general supervision will continue until 10/14/2002.

If you need to discuss this matter further with me, please contact me at your convenience.

Very truly yours,

Edward O'Farrell

Edward Emmett O'Farrell,
Judge

EEO'F/pll

cc: Kory Halter, Director, Community Corrections Felony Diversion Program

Law Offices
Joseph W. Diement, Jr. & Associates Co., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124-2189
E-Mail: diementlaw@aol.com

Joseph W. Diement, Jr.
Thomas M. Hanculak
Diane A. Calta
Jeffrey J. Sokolowski

Telephone
(440) 442-6800

Fax
(440) 442-0825

September 17, 2002

COPY VIA FACSIMILE 330-602-8811
ORIGINAL SENT REGULAR U.S. MAIL

9/18/2002
2:40 pm

The Honorable Edward Emmett O'Farrell
Judge, Court of Common Pleas
Tuscarawas County
101 East High Avenue, Ste. 202
New Philadelphia OH 44663-2599

RE: *State of Ohio v. David Cimperman*
Tuscarawas County Common Pleas Case No. 2001-CR-10-0247

Dear Judge O'Farrell:

It is my understanding that Mr. Cimperman has successfully completed participation in the Felony Diversion Program and has paid all associate costs.

As such, I am petitioning for Mr. Cimperman's termination from this program. Thank you very much for your expected cooperation.

Very truly yours,

Thomas M. Hanculak

TMH/cmg
tmhanculak@aol.com
cc: Kory A. Halter,
Director, Community Corrections Program
Mike Piotrowski
David Cimperman

X:\Gen. Clients\F-O-P\Cimperman\letters\judge.ofarrell.con.pleload.wpd

JOSEPH W. DIEMERT, JR. & ASSOCIATES CO., L.P.A.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(440) 442-6800
Fax: (440) 442-0825

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 330-602-8811

To: Judge Edward Emmett O'Farrell

From: Thomas M. Hanculak

Client/Matter:

Date: 9/18/02

DOCUMENTS	NUMBER OF PAGES*
	1

COMMENTS:

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TUSCARAWAS COUNTY OHIO

2002 OCT 21 A 11: 09

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

ENTERED

STATE OF OHIO,	:	CASE NO. 2001 CR 10 0247
PLAINTIFF	:	**JUDGE EDWARD EMMETT O'FARRELL**
	:	JUDGMENT ENTRY-**NON-ORAL**
	:	CONSIDERATION CONDUCTED ON 10/18/02-**COMMUNITYCORRECTIONS**
vs.	:	**DIVERSION PROGRAM** COMPLETION
	:	REPORT DATED 10/14/2002- ACKNOWLEDGED-INDICTMENT
	:	FILED 10/4/2001 CHARGING ONE (1)
	:	COUNT **UNAUTHORIZED USE OF TELECOMMUNICATIONS**
	:	**PROPERTY (SECTION 2913.04 [B]. OHIO REVISED CODE)(F-5)-**
	:	**DISMISSED** WITH PREJUDICE TO REFILING-PREVIOUSLY ENTERED
DAVID CIMPERMAN,	:	PLEA OF **NO CONTEST VACATED-**
S.S. #[redacted]		ORDER TO CLERK TO **SEAL RECORDS**
D.O.B. 6/29/64	:	**OF** INDICTMENT-ALL INDEX
HEIGHT-5'10"		REFERENCES TO CASE FILE ORDERED
WEIGHT-170 LBS.	:	**DELETED**-CASE FILE TO BE REMOVED
EYE COLOR-BLUE		FROM PUBLIC ACCESS IN CLERK'S
HAIR COLOR-BROWN	:	OFFICE-ORDER TO CLERK TO CLOSE
SEX-MALE		CASE FILE AND REMOVE FROM
RACE-CAUCASIAN	:	PENDING CASE DOCKET-ORDERS ENTERED
DEFENDANT	:	

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division on 10/18/2002 on a **Non-Oral** basis relative to the Defendant's successful completion of the **Community Corrections Diversion Program** which he originally commenced on 3/19/2002 and concluded participation on 5/20/2002. The Defendant reentered the program on 7/23/2002.

The Court

FINDS that on 10/14/2002 the **Community Corrections Diversion Program** filed a **Completion Report** apprising the Court that the Defendant has successfully completed the **Community Corrections Diversion Program.**

FINDS that the plea of **No Contest** offered to the Court by the Defendant on 7/23/2002 should be **Vacated** and the Indictment filed at the Clerk's Office on 10/4/2001 charging the Defendant with one (1) count **Unauthorized Use of Telecommunications Property** in violation of **Section 2913.04 (B), Ohio Revised Code, a felony of the fifth degree,** should be **Dismissed** with prejudice to refiling.

FINDS that the Defendant is entitled to **Expungement Orders** relative to the records of the Indictment in this case as a result of his having successfully completed the **Community Corrections Felony Diversion Program.**

FINDS that all additional Court costs not already paid by the Defendant are assessed against the State of Ohio and payment should be **waived.**

FINDS that the Clerk of Courts should close this case file and remove it from the pending case docket.

It is therefore

ORDERED, ADJUDGED AND DECREED that for the reasons set forth above the plea of **No Contest** offered by the Defendant on 7/23/2002 is **Vacated.**

ORDERED, ADJUDGED AND DECREED that the Indictment filed at the Clerk's Office on 10/4/2002 charging the Defendant with one (1) count **Unauthorized Use of Telecommunications Property** in violation of **Section 2913.04 (B), Ohio Revised Code, a felony of the fifth degree,** is **Dismissed** with prejudice to refiling.

ORDERED, ADJUDGED AND DECREED that the **records** of the Indictment in this case shall be **sealed,** except as provided in **Section 2953.32 (F), Ohio Revised Code,** and all index references to this case shall be **deleted.**

ORDERED, ADJUDGED AND DECREED that the proceedings shall be considered **not** to have occurred.

ORDERED, ADJUDGED AND DECREED that the **records** maintained by the Bureau of Criminal Identification and Investigation (BCI & I) are **Expunged** pursuant to **Section 109.09, Ohio Revised Code.**

ORDERED, ADJUDGED AND DECREED that all Court costs which have not been paid by the Defendant as of 10/18/2002 are assessed against the State of Ohio and payment is **waived.**

ORDERED, ADJUDGED AND DECREED that the Clerk of Courts shall close this case file and remove it from the pending case docket after **sealing** the records of this Indictment pursuant to the Orders of the Court above.

IT IS SO ORDERED.

Edward O'Farrell

Edward Emmett O'Farrell, Judge

10/19/2002

Date

cc: / Court Administrator's Office
/ Asst. Pros. Atty. Robert R. Stephenson II
/ Atty. Thomas m. Hanculak
/ Community Corrections Diversion Program
Attn: Kory Halter, Director
Bureau of Criminal Identification and Investigation
Tusc. County Sheriff

EEO'F/lrb

OHIO BUREAU OF
CRIMINAL IDENTIFICATIONS & INVESTIGATION
OFFICE OF THE ATTORNEY GENERAL

ENTERED

TO ALL POLICE DEPARTMENTS, SHERIFF'S OFFICES & CLERKS OF COURTS

RE: SEALING AND/OR EXPUNGEMENTS

When submitting court orders for Sealing or Expungement of an arrest, B,C,I,&I, requests this form be competed and attached to the court order to assure complete accuracy of our records.

Defendant's Name David Cimperman

Defendant's Address 1841 Esther Ave, Akron Ohio 44312
(Complete address with zip)

Date of Birth 06/29/64 Social Security Number [redacted]-1998

Arresting Agency Arrest No.7904

Arrest Charges Unauthorized Use of Telecommunications Property Felony Five

Date of Arrest10/05/01

Ohio BCI&I No. ITN 153382MA FBI No. _____

Common Pleas Court Case No. 2001 CR 10 0247 Control No. _____

Municipal court Case No. _____

Conviction [x] OR Dismissal [ ]

Conviction Charge Unauthorized Use of Telecommunications Property Felony 5 (Diversion Program)

Disposition of Conviction October 21, 2002

Send to Attention of: **Expungement Department of BCI&I**

An Internationally Accredited Law Enforcement Agency

P.O. Box 365, London, Ohio 43140
(740) 845-2000 FAX (740) 845-2020